17-0837-cv

United States Court of Appeals
for the
Second Circuit

PAUL J. MURPHY, Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board,

Petitioner-Appellee,

– v. –

CAYUGA MEDICAL CENTER, OF ITHACA,

Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK (SYRACUSE)

JOINT APPENDIX
Volume II of II (Pages A-197 to A-397)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----------X

PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

Case No.: 3:17-MC-0004

-Against-

CAYUGA MEDICAL CENTER AT ITHACA, INC.

----------X

ANSWER IN OPPOSITION TO PETITION FOR TEMPORARY INJUNCTION UNDER SECTION 10(J) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

CAYUGA MEDICAL CENTER ("Respondent" or "CMC") by and through their attorneys Bond, Schoeneck & King, PLLC, answers the Petition for Temporary Injunction Under Section 10(j) of the National Labor Relations Act as follows:

The preamble to the Petition requires no response. To the extent it may be read as setting forth allegations, Respondent DENIES such allegations.

1. ADMITS the allegations in Paragraph 1.

2. Paragraph 2 contains a legal conclusion and therefore requires no response. To the extent it is deemed to contain factual allegations, Respondent DENIES such allegations.

3. ADMITS the allegations in Paragraph 3.

4. ADMITS the allegations in Paragraph 4.

5. ADMITS the allegations in Paragraph 5.

6. ADMITS the allegations in Paragraph 6.

7. ADMITS the allegations in Paragraph 7.

8. DENIES the allegations in Paragraph 8.

(a) ADMITS the allegations in Paragraph 8(a).

(b) ADMITS the allegations in Paragraph 8(b).

(c) ADMITS the allegations in Paragraph 8(c).

(d) ADMITS the allegations in Paragraph 8(d).

(e) ADMITS the allegations in Paragraph 8(e).

(f) DENIES the allegations in Paragraph 8(f).

(g) ADMITS the allegations in Paragraph 8(g).

(h) ADMITS the allegations in Paragraph 8(h).

(i) ADMITS the allegations in Paragraph 8(i).

(j) ADMITS the allegations in Paragraph 8(j).

(k) DENIES the allegations in Paragraph 8(k).

(l) DENIES the allegations in Paragraph 8(l).

(m) DENIES the allegations in Paragraph 8(m).

(n) DENIES the allegations in Paragraph 8(n).

9. DENIES the allegations in Paragraph 9.

10. DENIES the allegations in Paragraph 10.

11. DENIES the allegations in Paragraph 11.

12. ADMITS the allegations in Paragraph 12.

The WHEREFORE clause sets forth legal conclusions and/or a plea for relief to which no response is required. To the extent that this Paragraph may be read as setting forth allegations to which a response is required, Respondent DENIES such allegations.

RESPONDENT'S DEFENSES

1. Petitioner does not set forth any evidence to establish reasonable cause to believe that the Respondent committed unfair labor practices, and therefore, an injunction should not be issued.

2. Petitioner does not establish that the relief sought would be just and proper.

3. Petitioner does not establish a likelihood of success on the merits and/or the existence of irreparable harm.

4. Petitioner does not establish that remedial measures available before the National Labor Relations Board would be insufficient if an injunction is not granted.

5. Petitioner's request for an injunction is premature. Petitioner requests to have the injunction decided on the basis of the administrative record developed before the Administrative Law Judge which is not yet developed.

WHEREFORE, Respondent respectfully requests that this Court dismiss the Board's petition in all respects and grant the Respondent such other further relief as it deems just and proper.

Dated: March 3, 2017

Respectfully Submitted,

BOND, SCHOENECK & KING, PLLC

By: /s/

Raymond J. Pascucci, Esq.
Tyler T. Hendry, Esq.
Attorneys for CAYUGA MEDICAL CENTER
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER,

Respondent.

DECLARATION OF RAYMOND J. PASCUCCI

Civil Action No.: 3:17-MC-00004 (TJM)(ATB)

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

I, Raymond J. Pascucci, declare, upon personal knowledge and under penalty of perjury that the following is true and correct:

1. I represent Respondent, Cayuga Medical Center ("CMC" or "Respondent"), in the above-referenced matter. I make this declaration in support of Respondent's Opposition to Region Three's Petition for Injunctive Relief Under Section 10(j); and Respondent's Answers/Responses in Opposition to Region Three's Motions to Shorten Time and for an Expedited Hearing and to Determine the Section 10(j) Petition on the Basis of the Administrative Record and Exhibits, as Supplemented by Affidavits.

2. An administrative hearing in this matter is ongoing. Testimony was taken on January 9-12 and it resumed this Monday, February 27. It is scheduled to continue for the entire week plus the following week through its completion. Should any additional days be needed, the ALJ has set aside the week of April 3, 2017 to complete the hearing. Thus, the administrative record will be complete in the near future.

3. As set forth in Petitioner's Opposition to the Petition for Injunction and Supporting Declarations, Region Three has not established grounds for Section 10(j) injunctive relief.

4. Region Three fails to submit any evidence to support its contention that reasonable cause exists to believe an unfair labor practice has occurred and therefore no injunction can be issued.

5. Region Three also cannot establish that injunctive relief is just and proper. As set forth in Petitioner's opposition, reinstating the two employees' to employment would be directly contrary to the public interest.

6. In this case, Ms. Marshall and Ms. Lamb (1) knowingly and deliberately violated policy and committed a fundamental breach of patient safety that placed the patient in danger of a potential lethal outcome; (2) caused the vulnerable patient fear and distress because she was aware of the nurses' disregard of the necessary safety precautions; and (3) falsified the Blood Transfusion Card by certifying that the proper two-nurse bedside verification had been performed.

7. The irreparable harm and potential danger that could be caused by reinstating these two nurses pending the completion of the administrative proceedings before the NLRB far outweighs any alleged minor impact on union activity that had been in decline far before Ms. Marshall and Ms. Lamb were terminated.

8. No injunctive relief should be granted and to the extent this Court considers granting injunctive relief, no relief should be considered until the administrative record is complete and both sides have had the opportunity to address the administrative record through briefs.

9. Region Three attaches an Administrative Law Judge decision that was issued on October 28, 2016 by David I. Goldman, that involved one of the terminated nurses, Anne Marshall, and was based on alleged unfair labor practices occurring back in Summer and Fall of 2015. See Memorandum of Points and Authorities in Support of Petition for Injunctive Relief, Ex. I. This decision is a recommended order that has not been adopted by the National Labor Relations Board. The Respondent has filed exceptions to the Administrative Law Judge's Recommended Order (i.e., an appeal) which are currently pending before the National Labor Relations Board. The Administrative Law Judge's decision is not final.

Dated: March 3, 2017

/s/
Raymond J. Pascucci

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER ,

Respondent.

DECLARATION OF KAREN AMES

Civil Action No.: 3:17-MC-00004 (TJM)(ATB)

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

I, Karen Ames, declare, upon personal knowledge and under penalty of perjury that the following is true and correct:

1. I am employed by CMC as Chief Patient Safety Officer & Director of Quality and Patient Safety. I have held this position since April 2010.

2. In this role, among other responsibilities, I am responsible for investigating patient safety complaints.

3. On September 11, 2016, Charge Nurse, RN Scott Goldsmith received a complaint from a patient who regularly received blood transfusions at CMC and was therefore familiar with the verification process. The patient recognized and reported that on September 11 the two nurses who performed the transfusion failed to properly verify both her ID and the blood to be used in the transfusion before starting the blood transfusion process. In fact, only one nurse was in the room at that time. Thereafter, Mr. Goldsmith entered the complaint into the incident reporting system. A copy of the incident report is attached as **Exhibit A**.

4. Loran Lamb and Anne Marshall had been the assigned nurses to perform the blood transfusion on September 11.

5. In my capacity as Chief Patient Safety Officer, I proceeded to conduct an investigation of the September 11 incident upon receipt of the incident report.

6. I, along with Deb Raupers, Director of Patient Services, interviewed the patient on September 16. I entered the information gathered during the interview into the incident reporting system. That information is attached as **Exhibit B.** Ms. Raupers also documented the interview. That information is attached as **Exhibit C.**

7. The patient also provided a written statement in connection with the investigation. That statement is attached as **Exhibit D.** The patient concluded "All previous nurses had made me aware of this protocol and led me through it – this nurse did none . . . I need the hospital to be aware of this breech [sic] of protocol and seriousness I felt being vulnerable in my bed."

8. As part of this investigation, Ms. Raupers and I spoke with the patient's sister, who was present in the room when the incident took place, and who is also a critical care RN in Maine. She reported that when asked "where is the 2nd nurse for the blood transfusion, [Ms. Marshall's] reply [was] 'We don't have to do that;' [and when] questioned why another nurse did, [Marshall's] reply [was] 'That must have been a new nurse.'" The sister also stated that, "As an experienced critical care RN, I was shocked by the responses."

9. I reviewed the September 11 Blood Transfusion Card for this patient completed by Ms. Marshall and Ms. Lamb. In the box with the heading "Below information must be verified at Patient Bedside" both nurses provided their initials and signed the card certifying that the correct procedures had been followed, even though according to the patient's report, and the family member's report, this was not the case. A copy of this card is attached as **Exhibit E.**

10. Blood transfusions are a critical procedure that could have a lethal outcome if an error results in transfusion of the wrong blood type. Therefore, CMC has maintained a Blood Product Administration Policy since at least 2013 to put in place as many safeguards as possible to ensure that a transfusion patient receives the correct blood. The Blood Product Administration Policy in effect at the time of the September 11 incident is attached as **Exhibit F**.

11. This policy requires two verifications by two nurses. The first verification occurs before the blood can be brought into the room. The two nurses must examine the patient information as well as the information on the blood bag from the laboratory. Both nurses must verify that everything matches, at which point the blood can be brought into the patient's room. This requirement was added to the policy in 2013 after a near-miss incident in October 2012 where a patient almost received the wrong blood.

12. The second verification occurs once the blood is in the patient's room. Again, the two nurses must verify the patient's name and date of birth (which requires the nurses to check the patient's identification bracelet), and checking the order and label on the bag. At that point, the blood bag can be hung and the infusion commenced. This second verification has at all times been a part of CMC's Blood Product Administration Policy and is a national standard of care.

13. This final two-person bedside verification process is absolutely fundamental as a final safeguard against a potentially fatal error prior to starting a blood transfusion. Please see the relevant section of Lippincott's, the authoritative source on standards for nursing practices, attached as **Exhibit G.**

14. In fact, it is the final bedside verification that saved the patient in October 2012 from receiving the wrong blood. It is the last line of defense before a patient receives blood and is imperative in ensuring patient safety.

15. Once the transfusion is complete, both nurses are required to complete the Blood Transfusion Card in the medical record certifying that every step of the verification process was followed and that the transfusion was administered in accordance with all of the necessary safeguards set forth in the Blood Product Administration Policy. It is my, and CMC's expectation, that the Blood Transfusion Card is filled out correctly and falsification of such a medical record, as with any other medical record, would be grounds for discipline, including, termination.

16. I interviewed Ms. Lamb on September 21st. Ms. Lamb admitted she never even entered the patient's room for this transfusion. She said she made a mistake and said she was sorry. Ms. Lamb went on to acknowledge that: (1) she understood the Blood Products Administration Policy; (2) she recently completed and understood the blood product training; and (3) that she knew that blood administration is a high risk process and that an error could be fatal for the patient. When asked about any contributing factors, Ms. Lamb said that the unit was busy at the time, but she knew that this was no excuse for not completing the two-person check at the bedside.

17. As part of CMC's investigation, this incident was submitted to CMC's Nursing Peer Review Committee, which is comprised of 6-12 RNs from across different care areas at CMC. As standard practice, after reviewing all relevant information concerning the incident, each committee member renders one of four possible judgments:

1 – Most experienced, competent practitioners would have managed the case in a similar manner

2 – Most experienced, competent practitioners might have managed the case differently

3 – Most experienced, competent practitioners would have managed the case differently

0 – Reviewer uncertain, needs committee discussion

The Committee unanimously concluded that, "3 – Most experienced, competent practitioners would have managed the case differently." A summary of this peer review and the conclusions reached is attached as **Exhibit H**.

18. We also provided information to Dr. Daniel Sudilovsky, Chairman of Pathology and Laboratory Medicine and Medical Director of Laboratories for CMC, concerning the incident. He concluded that the conduct was significantly severe enough that the two nurses should not be allowed to continue to provide services at CMC. All blood products are administered under Dr. Sudilovsky's license.

19. I reviewed the staffing records to evaluate Ms. Lamb's claim that the unit was busy. My review showed that: (1) each ICU nurse had two patients, which is the normal ratio; (2) the charge nurse had no patient assignment and was readily available to assist as needed; and (3) there was a RN designated as on-call who could have been (but was not) called in.

20. I also followed up with Charge Nurse Goldsmith to evaluate the claim that the nurses were busy. An email summarizing that conversation is attached as **Exhibit I**. It confirmed that staffing was at the normal ratio and there were no emergencies.

21. Ms. Marshall had been on a pre-scheduled vacation, and we were unable to speak with her about the incident until October 4. In this interview, Ms. Marshall admitted that she knew the policy but chose not to follow it because she was busy at the time. She argued that the policy is flawed and glibly diminished the importance of a fundamental patient safety/nursing practice protocol by asserting that she is fully capable of doing the final verification outside the patient's room while multi-tasking. This is particularly reckless since CMC policy declares blood product administration to be a "safety zone process", meaning that all steps must be

performed from start to finish without interruption, and if an interruption does occur the process must be restarted at the beginning and carried through to completion without interruption.

22. Finally, Deb Raupers and I reviewed the incident reporting system to confirm that no similar complaints regarding the failure to follow this protocol had been made. All of the hospital's records at least since the near miss incident in October 2012 reflect that all blood transfusions by nurses across all CMC units are conducted in accordance with the Blood Product Administration Policy, including the final two-RN bedside verification. My staff pulled all records during this relevant period; they were reviewed by Ms. Raupers and myself.

23. Additionally, although no other case is exactly like the misconduct committed by Ms. Lamb and Ms. Marshall, a somewhat comparable example occurred on June 23, 2016, where RN V. Comstock was discharged for failing to conduct checks before administering a medication, including failing to scan the patient bracelet. A copy of this discipline is attached as **Exhibit J**. In addition, there have been several cases where CMC employees were immediately discharged for falsifying medical records.

24. As a result of the investigation, CMC concluded that Ms. Marshall and Ms. Lamb (1) knowingly and deliberately violated policy and committed a fundamental breach of patient safety that placed the patient in danger of a potential lethal outcome; (2) caused the vulnerable patient fear and distress because she was aware of the nurses' disregard of the necessary safety precautions; and (3) falsified the Blood Transfusion Card by certifying that the bedside verification had been performed. In addition, Ms. Marshall disregarded the patient's own concern about following the proper protocol, and Ms. Lamb failed to even enter the patient's room despite certifying that she had.

25. Under these circumstances, I concluded that the nurses' actions were reckless and posed a substantial and unjustifiable risk to the patient.

26. I had no knowledge regarding Ms. Lamb's alleged pro-union feelings or sentiments.

Dated: March 2, 2017

Karen Ames

Karen Ames

Sworn to before me this
2nd ~~th~~ day of March, 2017.

NOTARY PUBLIC

ROBIN L TILTON
Notary Public, State of New York
No. 01TI6160254
Qualified in Tompkins County
Commission Expires February 05, 2019

Current Summary

TRANSFUSION-RELATED Event (130804) - 11-11-2016

File State: In-Progress
File Owner: Scott Goldsmith
Entered Date: 09-13-2016
Imported FileID:

General Event Information

General Incident Type	TRANSFUSION-RELATED
Classification of Person Affected	IN-PATIENT
Equipment Involved/Malfunction	No
Confidential	No

Person Affected

Last Name	[redacted]
First Name	
Person Medical Record #	
Account #	
Sex	F
DOB	
Street1	
Street2	
City	
State:	
ZIP:	
Phone	
Work Phone	
Room #	
Admission Date	

Event Details

Incident Date	09-11-2016
Incident Time	14:30
Site/Campus	Main Campus
Department (department that needs to Investigate Occurence)	Intensive Care Unit
Specific Location	not applicable
Other Dept/Services that need to investigate incident	
File Owner:	Scott Goldsmith
Entered Date	09-13-2016
Entered Time	13:43
Entered By:	Scott Goldsmith
Feedback Requested?	Yes - I would like feedback

Attachment

No Attachment

Specific Event Details

Specific Incident Type	deviation from standard operating procedure
Category of Complaint	
Reported Incident Severity	Severity Level 0-Near Miss/Potential Harm/Damage
Actual Incident Severity	
Any Contributing Factors related to Alarms (i.e. Alarm fatigue)?	Unknown
Brief Factual Description	Mrs [redacted] called me into her room and asked me to close the door. She then asked me if it was common practice to check a patient's ID bracelet before starting blood. I informed her it was. She then informed me that the nurse, Anne Marshall had hung the currently infusing blood without checking her ID. I noted that the attached paperwork had all the appropriate initials and vital signs. I approached Anne to ask if she had checked the patient ID against the blood before starting infusion. She informed me that she and another nurse had used patient's sticker sheet at the nurses station to confirm the information. We than had a brief discussion on the importance of checking blood at patient's bedside. Anne stated that she understood and would do so in the future. I also spoke with Loran Lamb, the cosigner on the paperwork. She verbalized the correct procedure for checking blood and stated that she would be sure to so from now on.
Contributing Factors	• Failure to follow procedure • policy/procedure issue
Immediate Actions Taken	• policy/procedure reviewed • staff reinstructed

Notifications

Notifications Made

Type of Person Notified:	Administrator
Name	Linda Crumb
Date	09-12-2016
Time	08:30

Follow-Up Actions

Follow-Up Actions

General

Date	09-14-2016
Type	Work done on file

Follow-Up Done By	Karen Ames
Followup To/With:	investigation
Time	17:44
Refer to Other Department?	

Details

Followup Description	Interviewed pt today. Patient described situation that led to her concern. She stated that in all other instances of hanging blood two nurses always came to bedside to conduct verification and pt ID. She noticed that this time only one nurse hung the blood without carrying out these steps or checking her name band and wondered why the difference. The patient questioned the nurse and was told by the nurse she (and the other nurse) checked everything at the nurse station. The pt stated her sister who is an RN witnessed this and was concerned and checked labels against blood bag. I thanked the patient for speaking up and assured her we take patient safety seriously- and that we would address this situation with the employee . Investigation continuing per our red rule policy.

Attachment

Attachment	
No Attachment	

General

Date	09-16-2016
Type	Work done on file
Follow-Up Done By	Polly Votaw
Followup To/With:	Note to file
Time	06:46
Refer to Other Department?	

Details

Followup Description	Case referred to Nursing Peer Review Committee per Request of Linda Crumb.Deb Raupers. Polly Votaw

Attachment

Attachment	
No Attachment	

Resolution/Outcome

Serious Safety Event Classification	
Consequence Rating	
Likelihood Rating	
Level of Risk	
Root Cause	
Red Rule Violation?	Yes
Total Time	0
Total Expense Incurred	$ 0.00
Outcome Notes:	
Closed By	
Closed Date	

End of Form

Follow-Up Done By	Karen Ames
Followup To/With:	investigation
Time	17:44
Refer to Other Department?	

Details

Followup Description	Interviewed pt today. Patient described situation that led to her concern. She stated that in all other instances of hanging blood two nurses always came to bedside to conduct verification and pt ID. She noticed that this time only one nurse hung the blood without carrying out these steps or checking her name band and wondered why the difference. The patient questioned the nurse and was told by the nurse she (and the other nurse) checked everything at the nurse station. The pt stated her sister who is an RN witnessed this and was concerned and checked labels against blood bag. I thanked the patient for speaking up and assured her we take patient safety seriously- and that we would address this situation with the employee . Investigation continuing per our red rule policy.

Attachment

Attachment
No Attachment

General

Date	09-16-2016
Type	Work done on file
Follow-Up Done By	Polly Votaw
Followup To/With:	Note to file
Time	06:46
Refer to Other Department?	

Details

Followup Description	Case referred to Nursing Peer Review Committee per Request of Linda Crumb.Deb Raupers. Polly Votaw

Attachment

Attachment
No Attachment

Resolution/Outcome

Serious Safety Event Classification	
Consequence Rating	
Likelihood Rating	
Level of Risk	
Root Cause	
Red Rule Violation?	Yes
Total Time	0
Total Expense Incurred	$ 0.00
Outcome Notes:	
Closed By	
Closed Date	

End of Form

Forrest, Brian

From: Raupers, Deb
Sent: Tuesday, September 20, 2016 4:54 PM
To: Forrest, Brian
Subject: FW: Phone interview with Mrs. [redacted]

From: Ames, Karen
Sent: Tuesday, September 20, 2016 3:58 PM
To: Raupers, Deb
Subject: RE: Phone interview with [redacted]

Looks accurate, can't think of anything else. Karen

From: Raupers, Deb
Sent: Tuesday, September 20, 2016 12:00 PM
To: Ames, Karen
Subject: Phone interview with Mrs [redacted]

Please feel free to add to narrative. This is my recollection of the phone call Friday at 12:15pm.

Frdiay 9/16/2016 Karen Ames and I called [redacted] to look into a patient complaint. We had rounded on the patient that am to find that she was discharged Thursday evening. I introduced myself and asked her if she would explain to me her complaint of what occurred when she was given blood in the ICU. [redacted] explained that her nurse came in the room and hung a unit of blood and started to infuse it and was going to walk out. [redacted] asked the nurse "don't you need to check my name and band" and follow some sort of protocol and the nurse responded "I already did that at the desk" and then walked out of the room. [redacted]'s sister, who is an RN, was sitting at the foot of her bed and was described as being "appalled". The sister immediately got up and checked the blood herself to make sure it was [redacted] They then contacted the charge nurse to explain what had occurred. [redacted] stated she felt safe only after her sister who is an RN checked her blood.

Karen and I explained that we have policies and procedures that staff must follow and that we would address the issue. We thanked her for bringing this issue forward and [redacted] stated that she "felt like she had to speak up". She had read the "speak up flyer" on her wall and felt that this was to important to let go. She was upset that after she questioned the nurse, the nurse just excused it away. I reassured [redacted] that we were taking this incident seriously and that we are proud that she partnered with us in her care and was an advocate for herself. I asked if she had the Your Rights booklet that we give out on admission and she looked in her paperwork and stated she did not have it at home. I then informed her of her right to call the NYSDOH toll free number to file a concern/problem/complaint and gave her the 1-800 number. I did reassure her that we would get back to her after investigation on our end.

Karen asked [redacted] if she would mind if she talked to her sister. [redacted] said that would be fine. Karen gave [redacted] her number to give to her sister to call at her convenience. [redacted] also asked us to address a discharge pharmacy issue that occurred that resulted in her not being able to get her antibiotic until the next morning. I thanked her for sharing everything with us and told her to call if she had anything else we could help with.

dcfr

Deb Raupers MSN, BSN, RN
Vice President, Patient Services
Chief Nursing Officer
Cayuga Medical Center
101 Dates Drive
Ithaca, NY 14850
(607) 272-4430 fax (607) 274-4527
draupers@cayugamed.org

Cayuga
MEDICAL CENTER
A Member of Cayuga Health System

Ames, Karen

From: Ames, Karen
Sent: Monday, September 19, 2016 11:59 AM
To: [redacted]
Subject: RE: Recounting of protocol incident 9/11/16

Hello Mrs[redacted] I hope you are feeling better. Thank you for forwarding this- I will also be looking into the prescription concern too. In terms of the Dept of Health- we are obligated to make sure you are aware of your rights and to provide you with the dept of health info. We are just making sure you have the info and that you do understand you can contact them with concerns. We will follow back up with you regarding these incidents.

Sincerely, Karen

-----Original Message-----
From:[redacted]
Sent: Monday, September 19, 2016 9:30 AM
To: Ames, Karen
Subject: Recounting of protocol incident 9/11/16

Dear Karen,
Here is my recounting of my blood protocol incident.

I have a cancer called myleodysplastic syndrome. In July I started needing to have blood transfusions. From day one the nurses talked me through the protocol they would be following whenever they administers a blood product for me. Call for blood, wait. Get Tylenol and Benadryl. Blood arrives, 2 nurses are in the room with the blood. They scan my name band, they ask me my name and birthdate. They read my name and number off my wrist and compare it to the paperwork. They then read the numbers on the blood bag and compare it to the paperwork numbers. If everything matches, then they start the blood.
Unfortunately I ended up in the hospital on September 5th. All my blood numbers were very low and I had an infection somewhere. In the next few days numerous blood products were hung and the protocol was followed. On September 11th it was determined that I would need a bag of blood. Nurse calls, we wait. My sister and aunt were in the room. The nurse (Anne) comes in hangs the bag and starts the blood. I looked at her and said "What about the protocol?" And she said "Oh, we did that at the desk."--and left the room. My sister, who is an RN in the state of Maine, ran over to the blood to check the numbers. I said "This isn't how it's ever been done." The numbers checked, so I relaxed, but when Scott come into the room (I think he was charge nurse for the day) I voiced my major concerns to him. All previous nurses had made me aware of the protocol and led me through it---this nurse did none. Scott told me he would speak to the nurse, and let me know after he did.
I need the hospital to be aware of this breech of protocol and seriousness I felt being vulnerable in my bed.

One other concern I have is about my discharge on Thursday, September 15th. It took time to get everything in order and ready for release. We were told prescriptions had been called in. We left the hospital after 6:00 pm, go to Wegman's Pharmacy and they had no knowledge of my prescriptions. My husband and I made 2 phone calls to find out about the prescriptions---they finally got called in---but one of the drugs was not going to be available until mid day the following day, which means I would be missing 2 dosages of one of the drugs. It was very nerve wracking to have to deal with this after a long day. It seems like there should be a better way to set up patients to be released.

You also informed me that I could turn the blood protocol incident in to the Department of Health. I am confused if you are just giving me information, or asking me to report this there also. You appear to be handling this at your hospital level. but I can send what I've written to you to them also if that would be helpful.

Thank you for the importance you are placing on this incident.
Sincerely,
[redacted]

Sent from my iPad

CAYUGA MEDICAL CENTER BLOOD TRANSFUSION CARD

[redacted]
Doctor:Timothy Bael MD
Location:ICU Room/Bed:ICU05-01
Unit#:0000397877
Date of Birth:08/03/1959 Age/Sex:[redacted]
Spec ID#: 0311:BB000004U
Patient Blood Type:(A Pos)
Antibody Screen: NEGATIVE
Donor Blood Type: (A Pos)
Antibody ID:
Donor Unit#:W030316203532
Compatible:Y 09/11/16 1519 (MIC0225)
Component: RBC LR IRR
Expiration Date: 09/29/16 2359
Lot#:

Laboratory:

BLOOD TRANSFUSION ORDER RECEIVED? ☒ YES ☐ NO

Issue Record

Issue Date __/__/__ Issued Time: __:__ Issued to Patient Location ____ O.R. / Dialysis, on ice? ____

We verify that the unit is intact and has a normal appearance. The unit is not outdated.

Signatures: Tech: ____ Courier: ____

*****PLEASE DO NOT REMOVE THIS TAG UNTIL THE TRANSFUSION IS COMPLETE*****

Transfusion Staff: Transfusion Checklist

All items below are to be verified by two Practitioners and initials placed in appropriate box.

		Physician Order Verified			Informed Consent had been obtained

Below information must be verified at Patient Bedside

		Patient Name, DOB on bracelet agrees with those on tag.			Unit type and Rh donor # on this form are the same as on container.
		Unit is not outdated.			Date Started 9/11/16 Time Started 1520

I have carefully completed the checklist, APPLIED GLOVES, and started the transfusions.

Signature: ____ Started By: ____

START T__ BP__ P 79 R__ Initial Blood Warmer Temp. ____ ☐ See Anesthesia Record

15 MIN T__ BP__ P__ R__ ENDING: T__ BP__ P__ R 20

Adverse Reaction: ☐ Yes ☒ No	If reaction, fill out form #13008 Report of Suspected Transfusion Reaction
Date Ended: 9/11/16	Time Ended: 1815
Amount Infused: 350 mL	Ended By:

Describe: ____

UNITS MUST BE TRANSFUSED WITHIN 4 HOURS FROM THE ISSUE TIME

Units NOT Transfused **MUST BE RETURNED** to the Blood Bank within 30 minutes.

Laboratory:

Returned Date: ____ Returned Time: ____ Returned by Signature: ____

I verify that this unit has been inspected and is acceptable. TECH SIGNATURE: ____

OR/DIALYSIS: Temperature Indicator: Acceptable____ Not Acceptable____ Initials____

DEPARTMENT OF PATHOLOGY, 101 DATES DRIVE, ITHACA, NEW YORK 14850
Phone #: 607-274-4474 FAX #: 607-274-4481 New York State Permit # 5481?919
Daniel Sudilovsky, M.D. Director of Laboratories
WHITE COPY - Blood Bank Only YELLOW - Return to Blood Bank PINK - Chart Copy

17054 (11/17/15)

17054

Cayuga Medical Center eLibrary Print

Document: Blood Product Administration Ver 7

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Standard

Registered Nurses (RNs) and Graduate Nurses (GNs) under the supervision of an RN with specified training, will administer blood or blood components. The entire blood transfusion process should be considered a safety zone process. Individuals participating should be identified and not interrupted during all steps.

Licensed Practical Nurses (LPNs) at Cayuga Medical Center (CMC) may assist Registered Nurses during the administration of blood and blood products by collecting vital signs and reporting any questionable findings such as changes in vital signs, signs or symptoms of blood reactions, and any other observations related to the administration of blood or blood products.

LPNs are not to be responsible for the administration of blood or blood products.

Purpose

To ensure the safe administration of blood or blood components.

Supporting Data

American Red Cross. (December, 2009). *Circular of information.* Retrieved from here.

Cayuga Medical Center Tissue & Transfusion Committee proceedings.

Circular of Information, American Red Cross, July 2010.

Lippincott, Williams & Wilkins. (2011). Transfusion therapy. The Journal of Infusion Nursing: Infusion Nursing Standards of Practice, 34(1S).

Roback, J., Combs, M. R., Grossman, B., & Hillyer, C. (2008). *Technical manual* (16th ed.). Bethesda, MD: American Association of Blood Banks.

Policy

Informed Consent

1. The ordering provider is responsible for informing the patient of risks, benefits of blood or blood component transfusion, complications and alternatives.
2. The information booklet *What You Should Know about Blood Transfusions* will be provided to the patient or designee prior to signing of consent. The nurse will discuss content of education materials with the patient or designee and document the patient or designee's acknowledgement and acceptance in the patient record.
3. The RN will ensure that the consent to transfuse is obtained and documented on the CONSENT TO TRANSFUSE form (form #13036), prior to blood product administration.
4. If the patient is unaware of the need for transfusion, does not understand, or is incapable of consenting, the provider must be notified. The RN should explain the need for documentation and

possibly additional discussion with the patient/family/guardian (in the case of minors). The ordering provider is then responsible for informed consent and subsequent documentation. The RN should document this conversation in the progress notes.

Obtaining Blood Products

1. A BLOOD PRODUCT TRANSFUSION ORDER/RELEASE FORM (form #13039) which is completed by the provider is required for every transfusion.
2. Only one unit of blood will be issued at a time from the blood bank, except in an emergency when more than one intravenous (IV) line is in use.
3. The courier must have a Blood Product Request slip with the patient's sticker and the signature of the RN in order to receive blood products from the blood bank. The form will be required for each unit of blood component received.
4. Only a Laboratory Technician or a Technologist may give out cross-matched blood, components, or derivatives – or remove them from the refrigerator.
5. Blood and blood components must be inspected at the time of issue.
    A) Examine blood or blood components for hemolysis and the cells for discoloration.
    B) Should blood or blood components appear abnormal in any way, do not remove from the lab; the blood will be placed in quarantine until it is evaluated.
6. Emergency release of blood: if urgency warrants release of blood before the cross match, the provider must sign the EMERGENCY RELEASE OF BLOOD FORM (form #13009).
7. Issuing blood or blood components
    A) A courier must be a CMC employee. Volunteers cannot transport blood components.
    B) A courier can only pick up blood or blood components for ONE patient at a time.
8. The Laboratory Technician and the courier will check the information on the Blood Product Request Slip with that on the cross match slip. They will verbally compare the following:
    A) Patient name
    B) Patient account number/date of birth
    C) Unit number
    D) Blood types
    E) Expiration date
9. If all information matches, the Technician and Courier will document on the transfusion card attached to the blood component.
10. The unit will be placed in a large plastic bag and sealed for transport. If gloves are worn during the transport of blood and blood products, they must be changed prior to handling the blood and blood products.
11. **All blood and blood products must be handled with gloves on.**

Documentation

1. Transfusion card will be completed in its entirety by two RNs/GNs and upon completion returned immediately to the lab.
2. Blood component type and fluid volume infused will be noted in the Intake and Output record.
3. Patient tolerance will be documented in the medical record.

Miscellaneous

Refusal to Consent to Blood Transfusion and Blood Components

1. In the event that a patient refuses to receive blood transfusion, the patient and provider must complete the Refusal to Consent to Blood Transfusions and Blood Components forms.

Patient with Capacity to Make Medical Decisions

A patient shall be considered to have capacity to make medical decisions if the patient is:

- Conscious;

- An adult 18 years or older, or an emancipated minor (i.e. under 18 and married or pregnant or under 18 and a parent), who has not been declared legally incompetent;
- Able to understand the nature and severity of his/her medical condition;
- Able to understand the possible consequences of refusing the proposed treatment; and
- Able to make informed choices concerning the course of treatment.

Minor
A minor refers to a person who has not yet reached the age of eighteen (18) and is not authorized under the laws of the State of New York to give consent for themselves (parent of a child; is or has been married; is pregnant). A person who is not a minor is an adult.

Patient's Representative
If a patient is an adult and lacks capacity to make medical decisions, a duly appointed Health Care Proxy or agent may act in place and instead of the adult who lacks capacity if the proper procedure for determining lack of capacity has been followed in the Medical Center. Patient's representative also means with respect to a minor patient the parent or guardian. The authorization to give consent for a minor's care does not carry with it the right to refuse medically necessary life sustaining treatment on behalf of the minor.

Procedure

1. Whenever a provider or hospital employee becomes aware that a patient or representative will not consent to blood transfusions on the basis of religious beliefs or other reasons will not be given or has been refused, the administrator on call of the Medical Center (or his/her designee) shall be immediately notified.
2. If, before lacking capacity, a patient or representative has informed his/her provider that he/she will not consent to blood transfusions on the basis of religious beliefs or other reasons, such patient shall be deemed to have refused consent for the purpose of this policy. The provider shall note the facts and circumstance of the patient's decision in the medical record.
3. The attending physician shall discuss with the patient or the patient's representative or a person authorized under the laws of the State of New York to consent on behalf of a minor, the consequences of refusing to consent to blood transfusions. The provider shall also discuss with the patient or patient's representative or such authorized person the alternatives to receiving blood transfusions including:
   A) Refusing to undergo the recommended medical treatment; the risks of so refusing; the alternate procedures; if any, and the risks thereof;
   B) Obtaining and storing the patient's own blood in preparation for any necessary transfusion during the recommended medical treatment;
   C) Transferring the patient to another hospital; or
   D) The patient or patient's representative or such authorized person obtaining a court order.
   This discussion shall be noted in the patient's medical record.
4. If, after receiving information as to the consequences and alternatives, the patient or patient's representative continues to refuse consent to blood transfusions, hospital management shall be notified and legal counsel shall be consulted prior to any medical procedure commencing.
5. After consulting with the patient's attending physician and Medical Center legal counsel, the hospital management shall determine whether to:
   A) Seek a court order permitting the transfusion;
   B) Refuse to permit the recommended medical procedure until such time as the patient or patient's representative obtains a court order supporting the right to refuse the transfusion; or
   C) Attempt to transfer the patient to another facility which will agree to perform the requested procedure.

6. No blood transfusions shall be given without the consent of the patient or patient's representative. In all cases of adult patients, the general consent of the patient or patient's representative to the procedure shall be deemed to include the consent to blood transfusions if necessary during the procedure, unless the Medical Center or somebody on behalf of the Medical Center or the attending physician has actual information that such consent is not given or is denied.
7. If either an adult patient or the patient's representative has not actually refused consent but the Medical Center has information from other persons that would reasonably lead the Medical Center to conclude that the patient would not consent to said blood transfusion, the Medical Center shall not continue with the medical procedure unless in the provider's judgment an emergency exists and the person is in immediate need of medical attention and the attempt to secure consent would result in delay of treatment which would increase the risk to the patient's life or health. Where consent to transfusions is clearly refused, the Medical Center may proceed to obtain a court order.
8. If the patient is a minor, only those authorized by the laws of the State of New York to give consent for a minor may consent to the transfusion of blood to a minor. General consent without raising a question by such authorized person shall be deemed to consent to the transfusion of blood to a minor. No elective procedure shall be performed on a minor where there is reasonable information to believe that consent to blood transfusion to the minor would not be given by an authorized person. No emergency procedure shall be performed on a minor for whom consent for blood transfusion has not been given or has been withdrawn or refused unless in the provider's judgment an emergency exists and the minor patient is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the minor patient's life or health. Where consent to blood transfusions for a minor is refused, the Medical Center shall make all reasonable efforts to obtain a court order before any blood transfusions are given.
9. The Medical administrator on call or her/his designee shall be consulted if there are any questions relating to this policy.

Return of Unused Blood

1. Issued blood should be started within 30 minutes after it is taken from the blood bank refrigerator. If it is determined that the blood is not going to be transfused, it must be returned to the blood bank within 30 minutes of release time.
2. The blood transfusion must be completed within four hours from time of blood bank release. Do not store blood in any refrigerator on the floor.

Disposal of Containers

1. Remove transfusion card and process per protocol, discard container in biohazard container.

Interfacility Transfers

1. Blood products accompanying a patient from another facility that is not currently infusing, may NOT be transfused. Transport unused blood product to the blood bank.

Warming of Blood

1. It is not necessary to warm blood before transfusion except in circumstances such as:
   A) Massive or rapid transfusion (greater than 50 ml/minute).
   B) Occasionally in exchange transfusion of the newborn.
   C) Patients with cold agglutinins.
2. Once blood has been warmed it cannot be returned to the blood bank for future transfusion.
3. Blood should only be warmed in an approved blood warmer, not by placing it near a heat source. *The temperature of the warmer needs to be documented on the transfusion card at the beginning of the transfusion.

Use of Blood Filters

1. To help prevent infections, filters must not hang for more than four (4) hours from the start of the transfusion.
2. All blood components, except albumin, must be transfused through a filter designed to remove clots and aggregates (generally a standard 170- to 260-micron filter)
3. Platelet filters - (can be used for one platelet pool or one pheresis) Must be used on all platelets – provider order not needed. The filter will be provided by the blood bank when issuing platelets.

Administration of Blood
Equipment

- Normal saline intravenous (IV) solution only (a 250 or 500 ml bag is sufficient).
- Y-type blood transfusion tubing or primary pump tubing and a secondary blood set.
- Basic venipuncture equipment as specified in venipuncture procedure (See IV Therapy – Peripheral Intravenous Line Insertion, Care, and Maintenance procedure).
- Exam gloves.

Transfusion of Packed Cells or Whole Blood

1. Review medical record for complete provider's order and consent to transfuse.
2. Obtain and record baseline temperature, pulse, respirations, and blood pressure before starting procedure. Document on Transfusion Card. Review or perform nursing systems assessment.
3. If blood warmer is used, document initial temperature of blood warmer on Transfusion Card prior to transfusing. (See IV Therapy Blood/Fluid Warmer policy). If blood warmer is not used, write N/A on the Transfusion Card.
4. Perform venipuncture, using a 20 gauge or larger needle for packed red blood cells or whole blood. If necessary, a 22 or 24 gauge IV catheter may used. Other blood components, such as platelets, cryoprecipitates, fresh frozen plasma, IVIg or albumin may also infuse through smaller needles. Examine the blood bag for contamination.
5. Prepare Y-tubing by closing all clamps and spiking the normal saline container.
6. Hang saline container on an IV pole and open the clamp just below the saline.
7. Fill the drip chamber until the filter is completely covered with saline, tapping the filter to remove air bubbles.
8. Prime the tubing by opening the flow rate control clamp.
9. When the solution reaches any Y-injection sites and the pump (second) chamber, invert the Y-injection sites and pump chamber so the ALL air is expelled, tapping the Y-injection site to remove air bubbles.
10. Attach IV fluid to clave clamp and run at ordered rate, a minimum of 3 mls/hour.
11. If using a pump to administer the blood, run saline through pump tubing per manufacturer's instructions.
    A) Obtain blood from blood bank. *Wear gloves when handling blood bag.*
12. A two-tier verification should be implemented on inpatient floors:
    A) Before taking blood into the patient room, the two nurses must verify the blood against the order and chart for correct patient name, blood type, type of blood product. No product should enter the patient room until it is verified.
    B) Inside the room, verification must occur matching the blood to the patient with two identifiers (name, date of birth [DOB]); verbally and against the patient wrist band.
    C) The blood must not be hung before the verification has occurred. If the nurse is interrupted for something more pressing, the incoming nurse will need to re-verify that the product is correct before transfusing.
13. Perform the 2-RN bedside checklist:
    A) Verify the provider's order.
    B) Verify that the consent has been signed by the patient (or appropriate representative).
    C) Check the blood bag number, expiration date, blood type and Rh.

D) Two RNs must identify the patient at the bedside by asking the patient for his or her name and date of birth. This is compared to the patient's armband and blood Transfusion Card.
E) Transfusion card will be completed in its entirety by two RNs/GNs and upon completion returned immediately to the lab.
F) *Wear gloves when handling blood bag.*

14. Hang the blood bag. Turn off saline, and open the clamp below the blood bag. Make sure the filter is completely immersed in fluid so that the blood does not drip directly onto the filter. This could cause hemolysis of the cells. Alternatively, attach the blood secondary set to the blood bag, prime and attach to primary tubing.
15. Ensure that entire length of pump/blood tubing is completely filled with blood product prior to attaching to patient. This will ensure that the start time documented on the Transfusion Card represents the time the blood actually started infusing into the patient.
16. During the first 15 minutes of the transfusion, the blood should run slowly (less than 100 ml/hr) and the nurse should closely observe the patient for adverse effects. Record vital signs before the transfusion is started, after the first 15 minutes of the transfusion and after the unit is completed on the blood Transfusion Card.
17. If the patient shows no signs or symptoms of a possible reaction, the rate of the transfusion may then be increased. Most patients not in congestive heart failure or fluid overload can tolerate one unit of packed cells in 1 1/2 to 2 hours. A unit of blood and any associated tubing should not hang more than four (4) hours from the time it was issued from the Blood Bank.
18. Upon completion of the transfusion, complete the remaining spaces on the Transfusion Card: date and time down, RN completing the transfusion, patient's reaction (if any), and amount infused. Record amount infused per unit protocol. Place the pink copy of the Transfusion Card in the patient record.
19. Return the yellow copy of the Transfusion Card to the Blood Bank via the pneumatic tube system, immediately after transfusion. Disconnect the blood bag and all associated tubing from the patient. The blood bag and all associated tubing will be discarded in the red biohazard trash, provided a suspected transfusion reaction has not occurred. New tubing must be hung for any further infusions.
20. In the event of an adverse reaction, refer to the Blood Transfusion Reaction Policy.
21. Catheter size and blood transfusion
    A) The only time that an 18 or 20 gauge would be required for blood product infusion is when large amounts of blood must be transfused rapidly, such as during trauma or during some surgeries. For routine transfusion, a 22 gauge or even a 24 gauge is acceptable. The primary consideration should be the size of the patient's veins and not an arbitrary catheter size.
    B) Blood is frequently transfused through 24-gauge catheters in neonates and pediatric patients and may be utilized for adults as well.
    C) The flow rate through a smaller catheter will be slowed slightly, however this should not have any impact on the clinical outcome, especially for 22 gauge catheters. If the patient's veins are small enough to allow only for a 24 gauge catheter, it is recommend that the blood bank split the unit into 2 aliquots. Obtain the first half of the unit to transfuse and leave the second half in the blood bank. This will allow you to infuse one unit over a maximum of 8 hours if necessary - 4 hours for each aliquot. For transfusion through a 24 gauge catheter, choose gravity infusion and do not use an infusion pump. Forcing the red blood cells through the smaller size catheter could result in some cell damage. Allowing them to flow by gravity allows time for the cells to change shape as they naturally do when flowing through small capillaries.
    D) Also, don't expect the same flow rate for blood through a 20 gauge lumen on a Peripheral Inserted Central Catheter (PICC) as you would through a 20 gauge short peripheral catheter. The reason is the length of the PICC. Length adds resistance to fluid flow. A one-

inch 20-gauge peripheral IV catheter will allow for more rapid flow rates than a 20-gauge PICC catheter that is 25 cm long.

Massive Transfusion Protocol

Definitions of Massive Transfusion include: Blood loss rate of 150 ml/min, ½ of total blood volume replaced over three hours, total blood volume replaced over 24 hours, and greater than 10 units of RBCs transfused over 24 hours. The blood bank has an adjusted blood release protocol to accommodate the emergent needs of the case and to ensure inclusion of platelets, fresh frozen plasma (FFP) and cryoprecipitate in the treatment protocol. The Massive Transfusion Protocol can be initiated with a phone call to the laboratory. Please refer to the Massive Transfusion Protocol (MTP) policy located in the laboratory.

Lippincott's Nursing Procedures

SIXTH EDITION

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Documentation

Record the time and date of transfer, the patient's condition during transfer, the name of the receiving unit, and the means of transportation. Include equipment accompanying the patient, such as IV lines and pumps, surgical drains, and oxygen therapy. Note the name and title of the person you gave your report to; also include the names of staff or family members accompanying the patient.

REFERENCES

1 The Joint Commission. (2012). Standard PC.04.01.01. *Comprehensive accreditation manual for hospitals: The official handbook.* Oakbrook Terrace, IL: The Joint Commission. (Level I)
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4 The Joint Commission. (2012). Standard NPSG.07.01.01. *Comprehensive accreditation manual for hospitals: The official handbook.* Oakbrook Terrace, IL: The Joint Commission. (Level I)
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ADDITIONAL REFERENCES

Chaboyer, W., et al. (2007). The effect of an ICU liaison nurse on patient's and family's anxiety prior to transfer to the ward: An intervention study. *Intensive and Critical Care Nurse, 23*(6), 362–369.
Committee on Patient Safety and Quality Improvement. (2012). "ACOG Committee Opinion Number 517: Communication Strategies for Patient Handoffs" [Online]. Accessed March 2012 via the Web at http://www.acog.org/Resources_And_Publications/Committee_Opinions/Committee_on_Patient_Safety_and_Quality_Improvement/Communication_Strategies_for_Patient_Handoffs

TRANSFUSION OF BLOOD AND BLOOD PRODUCTS

The transfusion of blood and blood products should be performed only as a last resort in patients with chronic anemia or acute bleeding. Prevention and early diagnosis of anemia or bleeding can help minimize the need for transfusion of blood and blood products. For a patient with chronic anemia, the use of iron and vitamin supplements is often sufficient to raise the hemoglobin level enough so a transfusion isn't required.

If the patient is experiencing acute bleeding, the first line of treatment should be IV fluids, such as crystalloids or colloids, to help increase the circulating volume. If the patient requires a blood transfusion, it's very important to make sure that the right patient is receiving the right blood or blood product. If a patient receives the wrong blood or blood product, it could cause a serious reaction and possibly death. Before administering blood or a blood product, you should be familiar with the different types of blood and blood products (See *Transfusing blood and selected blood products.*)

Equipment

Blood or blood component administration set as appropriate ■ IV pole ■ gloves ■ blood or blood product ■ 10-mL syringe ■ 250 mL of normal saline solution ■ IV catheter equipment, if necessary (should include 14G to 24G catheter).[3]

Straight line and Y-type blood administration sets (Y-type is most commonly used) contain a standard blood filter designed to eliminate blood clots and cellular debris that occur during blood storage. A standard blood filter will trap particles that are 170 microns or larger. There are times, however, when a specialized blood filter may be required. (See *Specialized blood filters,* page 745.)

Preparation of equipment

Avoid obtaining the blood or blood product until you're ready to begin the transfusion. The transfusion should begin within 30 minutes of obtaining the blood or blood product *to decrease the risk of bacterial growth.*[3] Prepare the equipment when you're ready to start the infusion.

NURSING ALERT *Never store blood in a non–blood bank refrigerator. Return the blood to the blood bank refrigerator if a delay of 30 minutes or more is anticipated.*[3,4]

Implementation

- Make sure that a written order is in the patient's medical record. Confirm that the order and the medical record are labeled with the patient's name and assigned identification number.[3,5]
- Verify that the patient or his legally authorized representative has signed an informed consent form before transfusion therapy is initiated and that the form is in the patient's medical record according to your facility's policy.[6] Some facilities don't require consent for blood components such as albumin; make sure you're familiar with your facility's policy.
- Ensure that the indication for the transfusion is documented in the patient's medical record.
- Gather the equipment.
- Confirm the patient's identity using at least two patient identifiers according to your facility's policy.[7]
- Explain the procedure to the patient.
- Perform hand hygiene and put on gloves.[8]
- If the patient doesn't have an IV catheter in place, insert one. Use a catheter that's 24G or larger in diameter.[3] The selection of the catheter size depends on the location, size, and integrity of the patient's veins. A smaller catheter usually requires a slower rate of transfusion. (See "IV catheter insertion and removal," page 421.)

Transfusing blood and selected blood products

BLOOD COMPONENT	INDICATIONS	COMPATIBILITY	NURSING CONSIDERATIONS
Packed red blood cells (RBCs) Same RBC mass as whole blood but with 80% of the plasma removed	▪ To restore or maintain oxygen carrying capacity ▪ To correct anemia and surgical blood loss ▪ To increase RBC mass ▪ For red cell exchange	▪ Group A receives A or O ▪ Group B receives B or O ▪ Group AB receives AB, A, B, or O ▪ Group O receives O ▪ Rh type must match	▪ Use blood administration tubing to infuse within 4 hours. ▪ Use only with normal saline solution. ▪ Avoid administering packed RBCs for anemic conditions correctable by nutritional or drug therapy.
Leukocyte-poor RBCs Same as packed RBCs with about 70% of the leukocytes removed	▪ Same as packed RBCs ▪ To prevent febrile reactions from leukocyte antibodies ▪ To treat immunocompromised patients ▪ To restore RBCs to patients who have had two or more nonhemolytic febrile reactions	▪ Same as packed RBCs ▪ Rh type must match	▪ Use blood administration tubing. ▪ May require a 40-micron filter suitable for hard-spun, leukocyte-poor RBCs. ▪ Use only with normal saline solution. ▪ Cells expire 24 hours after washing.
Platelets Platelet sediment from RBCs or plasma platelets	▪ To treat bleeding caused by decreased circulating platelets or functionally abnormal platelets ▪ To improve platelet count preoperatively in a patient whose count is 50,000/μL or less	▪ ABO compatibility identical; Rh-negative recipients should receive Rh-negative platelets	▪ Use a blood filter or leukocyte-reduction filter. ▪ As prescribed, premedicate with antipyretics and antihistamines if the patient's history includes a platelet transfusion reaction or to reduce chills, fever, and allergic reactions. ▪ Complete transfusion within 20 minutes or at the fastest rate the patient can tolerate. ▪ Use single-donor platelets if the patient has a need for repeated transfusions. ▪ Platelets aren't used to treat autoimmune thrombocytopenia or thrombocytopenic purpura unless patient has a life-threatening hemorrhage.
Fresh frozen plasma (FFP) Uncoagulated plasma separated from RBCs and rich in coagulation factors V, VIII, and IX	▪ To correct a coagulation factor deficiency ▪ To replace a specific factor when that factor isn't available ▪ For warfarin reversal ▪ To treat thrombotic thrombocytopenic purpura	▪ ABO compatibility required ▪ Rh match not required	▪ Use a blood administration set. ▪ Complete the transfusion within 20 minutes or at the fastest rate the patient can tolerate. ▪ Keep in mind that large-volume transfusions of FFP may require correction for hypocalcemia because the citric acid in FFP binds calcium. ▪ Must be infused within 6 hours of being thawed.

(continued)

Transfusing blood and selected blood products *(continued)*

BLOOD COMPONENT	INDICATIONS	COMPATIBILITY	NURSING CONSIDERATIONS
Albumin 5% (buffered saline); albumin 25% (salt-poor) A small plasma protein prepared by fractionating pooled plasma	▪ To replace volume lost because of shock from burns, trauma, surgery, or infections ▪ To treat hypoproteinemia (with or without edema)	▪ Not required	▪ Use the administration set supplied by the manufacturer and set the rate based on the patient's condition and response. ▪ Keep in mind that albumin is contraindicated in severe anemia. ▪ Administer cautiously in cardiac and pulmonary disease *because heart failure may result from circulatory overload.*
Factor VIII concentrate (antihemophilic factor) Cold insoluble portion of plasma recovered from FFP	▪ To treat a patient with hemophilia A ▪ To treat a patient with von Willebrand's disease	▪ ABO compatibility not required	▪ Administer by IV injection using a filter needle, or use the administration set supplied by the manufacturer.
Cryoprecipitate Insoluble plasma portion of FFP containing fibrinogen, factor VIIIc, factor VIIvWF, factor XIII, and fibronectin	▪ To treat factor VIII deficiency and fibrinogen disorders ▪ To treat significant factor XIII deficiency	▪ ABO compatibility required[1] ▪ Rh match not required[1,2]	▪ Administer with a blood administration set. ▪ Add normal saline solution to each bag of cryoprecipitate, as necessary, *to facilitate infusion.* ▪ Keep in mind that cryoprecipitate must be administered within 6 hours of thawing. ▪ Before administration, check laboratory studies to confirm a deficiency of one of the specific clotting factors present in cryoprecipitate. ▪ Be aware that patients with hemophilia A or von Willebrand's disease should only be treated with cryoprecipitate when appropriate factor VIII concentrates aren't available.

If an existing IV catheter is in place, verify it's an appropriate size and that it's patent by using a 10-mL syringe to aspirate for blood return. Central venous access devices also may be used for transfusion therapy.

▪ Record the patient's baseline vital signs.

▪ Obtain the blood or blood product from the blood bank. Check the expiration date on the blood bag, and observe for abnormal color, red blood cell (RBC) clumping, gas bubbles, and extraneous material. Return outdated or abnormal blood to the blood bank.

▪ Use a two-person verification process to match the blood or blood component to the doctor's order and to match the patient to the blood component. One of the individuals conducting the verification must be the qualified person, usually a registered nurse, who will administer the blood or blood component to the patient. The second individual conducting the verification must be qualified to participate in the process as determined by your facility's policy.[1]

▪ Compare the name and identification number on the patient's wristband with those on the blood bag label. Check the blood bag identification number, ABO blood group, and Rh compatibility. Also, compare the patient's blood bank identification number with the number on the blood bag.[1]

▪ When using a Y-type set, close all the clamps on the set. Insert the spike of the line you're using for the normal saline solution into the bag of saline solution. Next, open the port on the blood bag, and insert the spike of the line you're using to administer the blood or blood product into the port. Hang the bag of normal saline solution and blood or blood product on the IV pole, open the clamp on the line of saline solution, and squeeze the

drip chamber until it's half full. Then remove the adapter cover at the tip of the blood administration set, open the main flow clamp, prime the tubing with saline solution, and then close the clamp.

- If necessary, when administering packed RBCs with a Y-type set, you can add saline solution to the bag to dilute the cells by closing the clamp between the patient and the drip chamber and opening the clamp from the blood. Then lower the blood bag below the saline container and let 30 to 50 mL of saline solution flow into the packed cells. Finally, close the clamp to the blood bag, rehang the bag, rotate it gently *to mix the cells and saline solution*, and close the clamp to the saline container.
- Thoroughly disinfect the port of the venous access device with a disinfectant pad using friction.
- Trace the blood administration set tubing from the patient to its point of origin, and then attach it to the venous access device, open the clamp, and flush it with normal saline solution.[12] Then close the clamp to the saline solution and open the clamp between the blood bag and the patient.

When administering blood, never mix or administer simultaneously any other IV solution except normal saline solution,[3] which is isotonic and calcium-free. Calcium will bind with the citrate anticoagulant in the blood bag and promote clotting in the tubing. Excess glucose causes hemolysis and shortens RBC survival. Also, a blood administration set shouldn't be piggybacked into a main line that has been used for any solution other than normal saline solution.

- Monitor the patient closely and adjust the flow rate to no greater than 2 mL/minute for the first 15 minutes of the transfusion *to observe for a possible transfusion reaction.*[3] If such signs develop, record vital signs and stop the transfusion. Infuse saline solution at a keep-vein-open rate, and notify the doctor immediately. Report the transfusion reaction according to your facility's policy. (See "Transfusion reaction management," page 747.) If no signs of a reaction appear within 15 minutes, you'll need to adjust the flow clamp to the ordered infusion rate. The rate of infusion should be as rapid as the patient's circulatory system can tolerate. It's undesirable for blood products to remain at room temperature for more than 4 hours.[3] If the infusion rate must be so slow that the entire unit can't be infused within 4 hours, it may be appropriate for the blood bank to divide the unit and keep one portion refrigerated until it can be safely administered.
- Remove and discard your gloves and perform hand hygiene.
- Recheck the patient's vital signs, including temperature, every 15 minutes for the first 30 minutes after beginning the infusion, and then according to facility policy.
- Perform hand hygiene and put on gloves.
- After completing the transfusion, flush the administration set and IV catheter with the normal saline solution.
- Using sterile technique, remove and discard the used infusion equipment. If additional units are being given, repeat the procedure. Otherwise, as indicated, reconnect the original IV fluid, saline lock the site, or discontinue the IV infusion.

EQUIPMENT

Specialized blood filters

When deemed medically necessary, specialized filters are used to transfuse blood and blood products.[1]

FILTER TYPE	CONSIDERATIONS
Microaggregate filter	Commonly used during large-volume replacement in massive trauma Used to filter degenerating platelets, leukocytes, and fibrin strands that can develop in blood units stored for 5 or more days Use isn't warranted in routine transfusion therapy Eliminates debris as small as 20 microns
Leucocyte-reduction filter	Used to prevent febrile nonhemolytic reactions May be used to reduce the risk of cytomegalovirus transmission Reduces the number of leukocytes by 99.9% in red blood cell and platelet units

- Discard the blood bag, tubing and filter in the appropriate hazardous waste container.
- Remove and discard your gloves and perform hand hygiene.
- Record the patient's vital signs.
- Document the procedure.

Special considerations

- If necessary, using sterile technique, change the blood or blood component administration set after each unit is infused or after 4 hours. Change it immediately if contamination is suspected or the integrity of the product or system has been compromised.
- Change the filter whenever you change the tubing unless otherwise indicated by a manufacturer's labeled use and directions.[1]
- Use a blood warmer, as ordered, in special situations, such as when transfusing multiple units of refrigerated blood to a patient with a large volume of blood loss, performing exchange transfusions, or transfusing to a patient with cold agglutinin disease. Always follow the manufacturer's instructions.
- For rapid blood replacement, you may need to use a pressure bag or a positive pressure electronic infusion device. Always follow the manufacturer's instructions for use. Pressure bags should be equipped with a pressure gauge and exert uniform pressure. Be aware that excessive pressure may develop, leading to broken blood vessels and extravasation, with hematoma and hemolysis of the infusing RBCs.

Documenting blood transfusions

After matching the patient's name, medical record number, blood group (or type) and Rh factor (the patient's and the donor's), the crossmatch data, and the blood bank identification number with the label on the blood bag, you'll need to clearly document that you did so. The blood or blood component must be identified and documented properly by two health care professionals as well.

On the transfusion record, document:

- the date and time the transfusion was started and completed
- the name of the health care professional who verified the information
- the type and gauge of the catheter
- the total amount of the transfusion
- the patient's vital signs before and after the transfusion
- any infusion device used
- the flow rate and if any blood warming unit used.

If the patient receives his own blood, document in the intake and output records:

- the amount of autologous blood retrieved
- the amount reinfused in the intake and output records
- laboratory data during and after the autotransfusion
- the patient's pretransfusion and posttransfusion vital signs.

Pay particular attention to:

- the patient's coagulation profile
- hemoglobin and hematocrit values and arterial blood gas and calcium levels
- the patient's tolerance of the procedure, especially fluid status.

- If the transfusion stops, take the following steps as needed: Check that the IV container is at least 3' (1 m) above the level of the IV site. Make sure that the flow clamp is open and that the blood completely covers the filter. If it doesn't, squeeze the drip chamber until it does. Gently rock the bag back and forth, agitating any blood cells that may have settled. Untape the dressing over the IV site to check catheter placement. Reposition the catheter if necessary. Flush the line with saline solution, aspirate for blood return, and restart the transfusion. When using a Y-type set, close the flow clamp to the patient and lower the blood bag. Next, open the saline clamp and allow some saline solution to flow into the blood bag. Rehang the blood bag, open the flow clamp to the patient, and reset the flow rate.
- If a hematoma develops at the IV site, immediately stop the infusion. Remove the IV cannula. Notify the doctor and expect to place ice on the site intermittently for 8 hours and then apply warm compresses. Follow your facility's policy.
- If the blood bag empties before the next one arrives, administer normal saline solution slowly. If you're using a Y-type set, close the blood-line clamp, open the saline clamp, and let the saline run slowly until the new blood arrives. Decrease the flow rate or clamp the line before attaching the new unit of blood.
- Keep in mind that blood products must be infused within 4 hours of removal from the blood bank refrigerator.[2,1] If any blood product remains after 4 hours, discontinue the infusion and discard the remaining product in the hazardous waste container in the patient's room *to prevent accidental exposure.*
- Monitor the patient's intake and output and lung status and watch for edema *to prevent fluid overload.*
- Be aware that whole blood is rarely used. It may be used on rare occasions to restore blood volume from hemorrhage or in an exchange transfusion.
- If the patient is a Jehovah's Witness, special written permission from him is required for a transfusion.

Complications

Despite improvements in crossmatching precautions, transfusion reactions can still occur during a transfusion or within 96 hours after a transfusion. Transfusion reactions typically stem from a major antigen-antibody reaction. The nurse must closely monitor for signs and symptoms, especially if the patient can't report the symptoms. A transfusion reaction requires prompt nursing action *to prevent further complications and, possibly, death.*

Unlike a transfusion reaction, an infectious disease transmitted during a transfusion may go undetected until days, weeks, or even months later, when it produces signs and symptoms. Measures to prevent disease transmission include laboratory testing of blood products and careful screening of potential donors, neither of which is guaranteed.

Hepatitis C accounts for most posttransfusion hepatitis cases. The tests that detect hepatitis B and hepatitis C can produce false-negative results and may allow some hepatitis cases to go undetected.

When testing for antibodies to human immunodeficiency virus (HIV), keep in mind that antibodies don't appear until 6 to 12 weeks after exposure. The American Association of Blood Banks estimates the risk of acquiring HIV from a single blood transfusion is between 1 in 40,000 to 1 in 153,000.

Many blood banks screen blood for cytomegalovirus (CMV). Blood with CMV is especially dangerous for an immunosuppressed, seronegative patient. Blood banks also test blood for syphilis, but refrigerating blood virtually eliminates the risk of transfusion-related syphilis.

Circulatory overload and hemolytic, allergic, febrile, and pyogenic reactions can result from any transfusion. Coagulation disturbances, citrate intoxication, hyperkalemia, acid-base imbalance, loss of 2,3-diphosphoglycerate, ammonia intoxication, and hypothermia can result from massive transfusion.

Documentation

Record the date and time of the transfusion, that informed consent was obtained, the indications for the transfusion, the type and amount of transfusion product, the amount of normal saline solution, the patient's vital signs, your check of all identification data, and the patient's response. Document any transfusion reaction and treatment provided. Note any patient teaching and the patient's understanding of your teaching. (See *Documenting blood transfusions.*)

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TRANSFUSION REACTION MANAGEMENT

A transfusion reaction typically stems from a major antigen-antibody reaction and can result from a single or massive transfusion of blood or blood products. It's estimated that 1% to 2% of all patients who receive a transfusion of blood or blood products experience a transfusion reaction. Although many reactions occur during transfusion or within 96 hours afterward, infectious diseases transmitted during a transfusion may go undetected until days, weeks, or months later, when signs and symptoms appear.

A transfusion reaction requires immediate recognition and prompt nursing action to prevent further complications and, possibly, death—particularly if the patient is unconscious or so heavily sedated that he can't report the common symptoms. (See *Guide to transfusion reactions,* pages 748 and 749.)

Equipment

Gloves normal saline solution IV administration set sterile urine specimen container supplies for blood collection (see "Venipuncture," page 781) transfusion reaction report form stethoscope blood pressure cuff pulse oximeter thermometer laboratory specimen labels laboratory request form laboratory biohazard transport bags Optional: oxygen, epinephrine, hypothermia blanket, leukocyte removal filter.

Implementation

- Perform hand hygiene.
- Confirm the patient's identity using at least two patient identifiers according to your facility's policy.
- As soon as you suspect an adverse reaction, stop the transfusion and notify the doctor and the blood bank.
- Prepare a normal saline infusion using a new macrodrip IV administration set.

(Text continued on page 750.)

Summary of Nursing Peer review on 9/23/2016

I met with Nursing Peer review committee to review an incident involving blood administration on patient MR # [redacted] The committee reviewed the investigation that was completed by Karen Ames, the patient letter, medical record and blood policy and procedure.

The committee then concluded and reported their findings as: **Most experience, competent practitioners would have managed the case differently.**

This determination was based on the following:

1. The patient was not positively identified prior to the start of her blood transfusion.
2. The transfusion protocol was not followed correctly, particularly with two essential aspects; a 2 nurse bedside check was not performed and the nurse's dismissal of the patients concern when the patient verbalized her observation that this transfusion was approached in a very different manner than her previous transfusions.

The committee did not feel that this incident occurred due to environmental factors such as census in the ICU at the time or staffing issues or process/protocol failure.

Deb Raupers MSN, RN

Raupers, Deb

From: Ames, Karen
Sent: Tuesday, October 04, 2016 12:46 PM
To: Forrest, Brian; Raupers, Deb
Cc: Crumb, Linda
Subject: conversation with Scott Goldsmith

I spoke with Scott today at noon to finalize my investigation of the blood transfusion incident. Per Scott there was good staffing that day and Scott was unassigned as the charge nurse. There were no emergencies that day (there was a patient that was being transferred out but that did not impact this in any way per Scott). I asked Scott if Anne had asked for help, and he stated she did not. I also asked if there was any variation in practice with hanging of blood and he stated that the two person RN check is standard practice and that this is well known among nurses. He also stated he can't speak to what they do unless it is in front of him. He stated he does not know any reason that any RN would do this at the nurses station, it does not save any time whether you do it at the bedside or at the nurses station. After Scott spoke with the patient he asked Anne and Loran about this incident, Scott stated both Anne and Loran acknowledged that they had not done the RN check at the bedside and indicated it would not happen again.

Karen

Karen A Ames, RRT, MA
Six Sigma Black Belt
Chief Patient Safety Officer & Director of Quality and Patient Safety
Cayuga Medical Center
607-274-4436

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER ,

Respondent.

DECLARATION OF ANDREA CHAMPION

Civil Action No.:
3:17-MC-00004
(TJM)(ATB)

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

I, Andrea Champion, declare, upon personal knowledge and under penalty of perjury that the following is true and correct:

1. I am employed as the Director of Emergency Service at Cayuga Medical Center ("CMC"). I have been in this role since approximately October 3, 2016. Part of my job duties require me to supervise the approximately 30 RNs in the Emergency Service Department.

2. In or around the middle of February, Cheryl Durkee, a RN in the Emergency Service Department, was in my office and stated: "In case you have not heard, I am not only a Union supporter, but I am a Union organizer." I responded that she had every right to unionize or not as an employee and it didn't matter to me as I had worked in both worlds.

3. Ms. Durkee, along with several other employees in the Emergency Service Department, continue to wear SEIU or "Organize" pins and/or paraphernalia.

Dated: March 3, 2017

Andrea Champion

Sworn to before me this
3th day of March, 2017.

NOTARY PUBLIC

Lorrie A. Mahoney
Notary Public, State Of New York
No. 01MA6149952
Qualified in Tompkins County
Commission Expires 7/17/2018

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MURPHY, REGIONAL DIRECTOR OF REGION 3 OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER ,

Respondent.

DECLARATION OF BRIAN FORREST

Civil Action No.: 3:17-MC-00004 (TJM)(ATB)

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

I, Brian Forrest, declare, upon personal knowledge and under penalty of perjury that the following is true and correct:

1. I am the Vice President of Human Resources at Cayuga Medical Center ("CMC").

2. CMC has always maintained two separate types of bulletin boards throughout the medical center. Bulletin boards adjacent to the time clocks have always been exclusively reserved for official CMC business, including such items as statutory notices to employees, information about employee benefits, and memoranda from senior leadership on various topics (referred to as "official bulletin boards").

3. Other bulletin boards located in break rooms and a public bulletin board near the cafeteria are open for employee use to post non-work related material, such as advertisements for dancing lessons, used cars for sale, apartments for rent, etc.

4. Ms. Barr did remove one union posting from an official bulletin board adjacent to the time clock in the ICU.

5. CMC does not allow non-work related materials to be posted on this particular bulletin board since it is one of the official bulletin boards reserved exclusively for CMC business.

6. CMC allows non-work related materials to be posted on the bulletin boards set aside for employee use, including in the ICU break room, where many union notices have been posted and been allowed to remain.

7. There are around 450 RNs employed at CMC.

8. At no time since the organizing drive began has a petition for an election to certify SEIU as the employees' exclusive bargaining representative been filed with the NLRB.

Dated: March 2, 2017

Brian Forrest

Sworn to before me this
2 th day of ~~February~~, 2017.

NOTARY PUBLIC

BETSEY CONNER
Notary Public, State of New York
Appointed in Cayuga Co
Official #01CO5072278
Commission expires 11/30/2017

98695 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER ,

Respondent.

DECLARATION OF JEFFREY PROBERT

Civil Action No.:
3:17-MC-00004
(TJM)(ATB)

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

I, Jeffrey Probert, declare, upon personal knowledge and under penalty of perjury that the following is true and correct:

1. I am employed as the Digital Media Specialist at Cayuga Medical Center ("CMC").

2. In this role, I am responsible for driving the social media and online presence of CMC.

3. From time to time, this may include reviewing publicly available postings and materials regarding CMC.

4. In relation to this legal proceeding, I was asked to review publicly available Facebook postings for information that may be helpful to evaluate how many people were attending union meetings prior to October 4 and 5. My review indicated that on July 28, 2016, a Union organizing meeting was held at the Plumbers Union Meeting room. This invitation was publicly available, and according to the Facebook page, only one person indicated they would

interested and there was only one attendee. **Exhibit A.** This appears to be the most recent Union meeting prior to October 4 and 5.

5. Also in relation to this proceeding, I reviewed the publicly available group "Unionize CMC RNS Now" which continues to contain postings about the organizing effort and terms and conditions of employment. For example, **Exhibit B**, is a publicly available article dated 10/26/2016, that discusses the unionization effort and conditions of employment. This article was publicly posted on Truthsayers.org, a website for reporting about local news in Ithaca, New York. This article was subsequently shared on the Unionize CMC RNs Now public Facebook page. A copy of this Facebook posting is also included with **Exhibit B**.

6. Also, on October 24, 2016, weeks after the terminations of Ms. Lamb and Ms. Marshall, this same Facebook group posted another article titled "Nurses Leaving Cayuga Medical Center in Mass Exodus." This article quotes current RN David Kraskow, stating "a problem the union needs to address is people on our unit are floated to other units." Additionally, in this October 24, 2016 article there is a picture of current RN Cheryl Durkee who is pictured tabling alone in the CMC cafeteria in support of the Union. She is also interviewed and quoted regarding terms and conditions of employment. **Exhibit C** is a copy of the Facebook post and the corresponding article.

7. In fact, the following is written at the bottom of both articles: "Since April 2015 nurses at Cayuga Medical Center, Tompkins County's only hospital, have been organizing to form a union. Local media coverage has been limited. Help support further stories on this issue from this independent reporter with a donation at the link." See **Exhibits B & C.**

8. There have also been more recent Facebook posts showing signs around the Ithaca community supporting Cayuga Medical Center RNs (post attached as **Exhibit D**) and a

variety of other topics including multiple posts on a nurse falsifying her triage documentation, which resulted in the termination of that nurse. Examples of such Facebook posts and stories are attached as **Exhibit E**.

9. In addition, there are many posts from Ms. Marshall on this Unionize CMC RNs page where Ms. Marshall continues to actively support the Union by posting and communicating with her former co-workers. Examples of such posts are attached as **Exhibit F**.

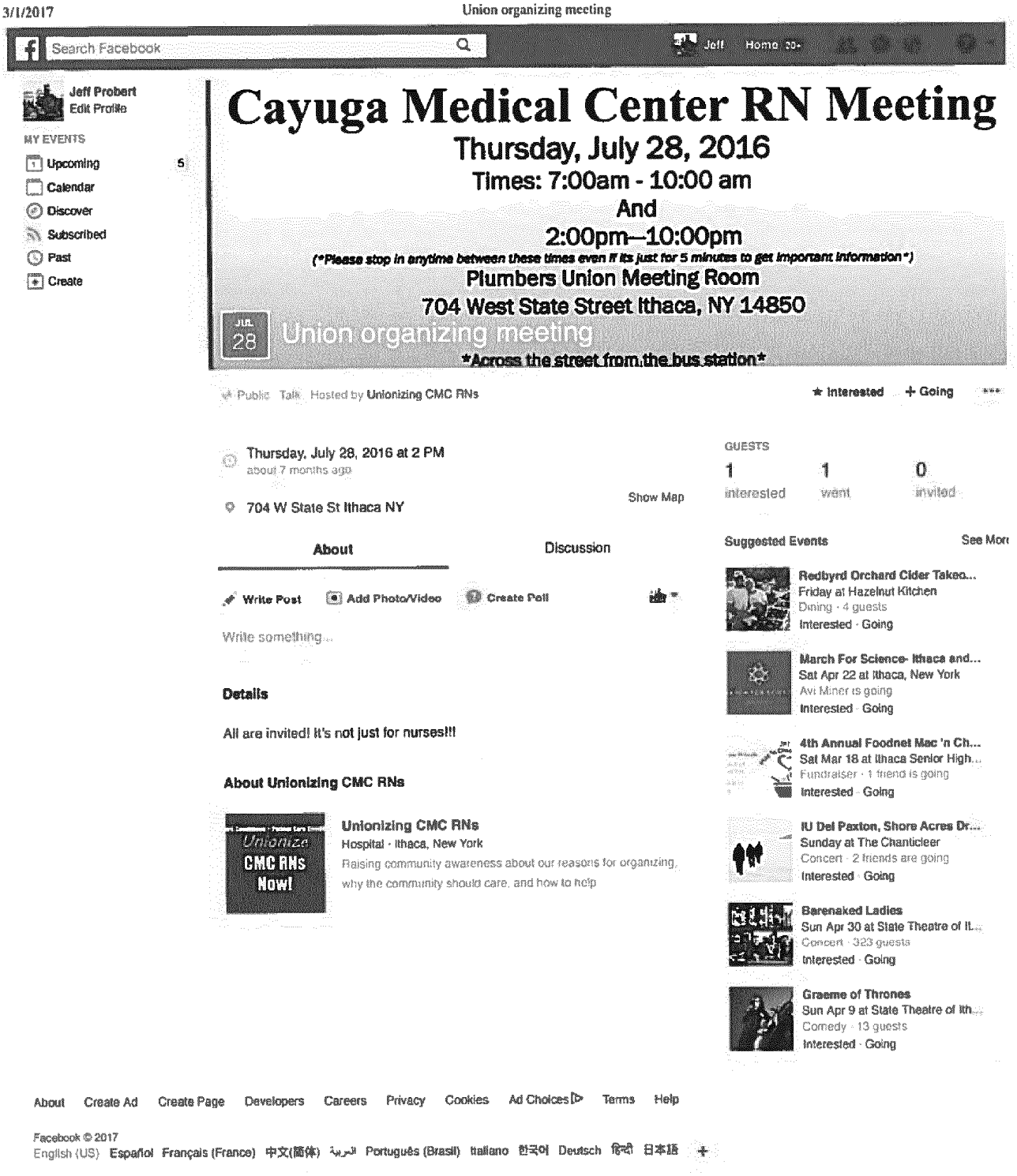
Dated: March 2, 2017

Jeffrey Probert

Sworn to before me this
2nd ~~th~~ day of March, 2017.

NOTARY PUBLIC

ROBIN L TILTON
Notary Public, State of New York
No. 01TI6160254
Qualified in Tompkins County
Commission Expires February 05, 2019


Search Facebook
Jeff
Home
Jeff Probert
Edit Profile
MY EVENTS
Upcoming 5
Calendar
Discover
Subscribed
Past
Create
Cayuga Medical Center RN Meeting
Thursday, July 28, 2016
Times: 7:00am - 10:00 am
And
2:00pm–10:00pm
(*Please stop in anytime between these times even if its just for 5 minutes to get important information*)
Plumbers Union Meeting Room
704 West State Street Ithaca, NY 14850
JUL 28
Union organizing meeting
Across the street from the bus station
Public Talk Hosted by Unionizing CMC RNs
Interested
Going
Thursday, July 28, 2016 at 2 PM
about 7 months ago
704 W State St Ithaca NY
Show Map
GUESTS
1 interested
1 went
0 invited
About
Discussion
Write Post
Add Photo/Video
Create Poll
Write something...
Details
All are invited! It's not just for nurses!!!
About Unionizing CMC RNs
Unionize CMC RNs Now!
Unionizing CMC RNs
Hospital · Ithaca, New York
Raising community awareness about our reasons for organizing, why the community should care, and how to help
Suggested Events
See More
Redbyrd Orchard Cider Takeo...
Friday at Hazelnut Kitchen
Dining · 4 guests
Interested · Going
March For Science- Ithaca and...
Sat Apr 22 at Ithaca, New York
Avi Miner is going
Interested · Going
4th Annual Foodnet Mac 'n Ch...
Sat Mar 18 at Ithaca Senior High...
Fundraiser · 1 friend is going
Interested · Going
IU Del Paxton, Shore Acres Dr...
Sunday at The Chanticleer
Concert · 2 friends are going
Interested · Going
Barenaked Ladies
Sun Apr 30 at State Theatre of It...
Concert · 323 guests
Interested · Going
Graeme of Thrones
Sun Apr 9 at State Theatre of Ith...
Comedy · 13 guests
Interested · Going
About Create Ad Create Page Developers Careers Privacy Cookies Ad Choices Terms Help
Facebook © 2017
English (US) Español Français (France) 中文(简体) العربية Português (Brasil) Italiano 한국어 Deutsch हिन्दी 日本語
Chat (28)

October 26, 2016 (http://www.truthsayers.org/2016/10/26/tragically-he-died-alone-cayuga-medical-center-nurses-say-staffing-levels-unsafe/)

'Tragically, he died alone:' Cayuga Medical Center Nurses Say Staffing Levels Unsafe

HEALTH CARE (HTTP://WWW.TRUTHSAYERS.ORG/CATEGORY/HEALTH-CARE/), ITHACA (HTTP://WWW.TRUTHSAYERS.ORG/CATEGORY/ITHACA/), LABOR (HTTP://WWW.TRUTHSAYERS.ORG/CATEGORY/LABOR/)

By Josh Brokaw

Cayuga Medical Center nurses in critical care units say that the hospital's staffing patterns frequently put patients at risk. The nurses say there are often not enough skilled nurses scheduled per shift to take adequate care of patients.

Nurses in the emergency department [ED], intensive care unit [ICU], and behavioral services unit [BSU] who spoke for this series listed nurse-to-patient staffing ratios as one of their top reasons for supporting a union at CMC. Their concerns were part of why they first started organizing for an union vote, before the recent mass exodus of nurses from Tompkins County's only hospital.

October 24: Nurses Leaving Cayuga Medical Center in 'Mass Exodus' (http://www.truthsayers.org/2016/10/24/nurses-leaving-cayuga-medical-center-in-mass-exodus/)

"I was feeling I was putting my license on the line," said Cristina Avalle, an ED nurse who left in May 2016 for a hospital in California, the only state where nurse-to-patient ratios are set by law.

Emergency room entrance at Cayuga Medical Center, October 2016. Photograph: Josh Brokaw

Nurses say they fear incidents like the two described by an anonymous poster on hospitalsafetyreviews.com (http://www.hospitalsafetyreviews.com/cayuga-medical-center-ithaca-new-york/), a website set up by Dan Walter, a Florida-based health care journalist.

In one incident, the poster reports, "a patient in the ICU died because a Levophed drip ran dry, and there were not enough nurses on the floor to hear the pump alarm. There were several critically ill people needing multiple nurses in the room to care for them, so when the pump ran dry in one patient's room no one heard it until the alarm on the monitor sounded – and by then it was too late."

The other incident described in that post affected Erin Bell, a CMC emergency nurse who left in May 2016.

Here's how the anonymous reporter described it: (http://www.hospitalsafetyreviews.com/cayuga-medical-center-ithaca-new-york/)

> "Another event in the ER consisted of a nurse assigned with four patients. Two were critically ill and intubated headed to the ICU, one was stable and the other was actively dying and in need of comfort and pain control. The nurse was so overwhelmed and the ER was so understaffed for the night, no one was available to help her. The other four nurses, including the charge nurse, had four or more patients a piece. The nurse with the critically ill patients and the dying patient had to make a determination of whether to comfort and relieve the pain of an elderly dying man or save the patient that was intubated on multiple IV's and life sustaining meds. The **elderly man died a painful death, alone**. With more staff he could have had pain control and someone with him."

"That was my patient." Bell said. There were actually three nurses on that night who were legally allowed to take patients, she said: the fourth nurse had less than a year of nursing experience and was orienting to the ED.

"She was taking care of patients without much oversight, because of how

busy we were," Bell said.

The patient's family "was giving palliative orders over the phone," Bell said. "He was on death's door. I was told to keep him comfortable … Tragically, he died alone and in pain. I had to take care of patients I still had a chance to save, but I still carry that guilt with me."

That incident was one of the triggers, Bell said, that led her to actively organize nurses to join SEIU 1199 until she left CMC in May 2016.

A letter posted on hospitalsafetyreviews.com (http://www.hospitalsafetyreviews.com/forums/topic/cayuga-responds-with-talking-points/) from David Evelyn, CMC vice president of medical affairs, said that "Our Quality and Patient Safety Department have investigated the claims by the anonymous writer and cannot substantiate them based the information we have."

Asked to comment on that finding, Bell said "That's why don't allow companies to internally investigate."

Cayuga Medical Center nurses Scott Marsland, Erin Bell, and Cheryl Durkee table for unionization support at the 2015 Apple Harvest Festival, Ithaca Commons. Photograph via Facebook.

Nurses in critical units say that CMC's use of floating nurses to fill staffing gaps is a detriment to patient care. [Floating nurses are those scheduled in one department when they typically work in another.]

The BSU was "short-staffed on weekends, with more floating nurses than those trained in mental health care," said "Rhonda," a former BSU nurse whose name we're withholding.

Having more floating nurses than nurses trained in mental health care is "unsafe," Rhonda said, "because a lot of patients have a tendency to have outbursts, or get physically violent."

"You can't have a medical nurse go to the ICU and function," said Michael Doan, a former director of the telemetry unit. "A nurse is not a nurse is not a nurse."

Anne Marshall, an ICU nurse, wrote a story in October 2015 on the "Unionizing CMC" Facebook group illustrating the issue of float nurses.

> "(A) surgeon came to check on his patient in ICU and was dismayed to find that a float nurse was caring for his patient. When the surgeon asked the ICU charge nurse why this occurred she replied "we didn't have enough of our own staff to care for all these patients, so the ICU nurses are caring for the most critical and yours isn't one of them." His reply, "I put my patient here for ICU care and they are not getting it!" The charge nurses' hands were tied she could only provide ICU care for a certain number of patients that night and the surgeons wasn't one of them …"

In the ICU, "every nurse is supposed to have two patients," Marshall said. "We were never staffed for that."

When we first spoke in August, before Marshall's termination, she said there were five nurses on the ICU caring for 13 patients on the last 12-hour shift she'd completed. One of those nurses was on a 1-to-1 assignment, "because the patient was so sick."

October 13: CMC RNs Fired: Policy Violation or Union Busting? Read the story about Marshall's termination. (http://www.truthsayers.org/2016/10/13/cmc-rns-fired-policy-violation-or-union-busting/)

Organizing nurses hope that a union contract would help them set nurse-to-patient ratios. The "model contract" that SEIU 1199 says it uses in negotiations (http://www.1199seiu.org/contracts), that with the League of Voluntary Hospitals, includes set nurse-to-patient ratios. Several nurses also mentioned, with some hope, efforts to pass a statewide nurse-to-patient ratio law that have been spearheaded by the New York State Association of Nurses (http://www.politico.com/states/new-york/albany/story/2016/06/historic-evening-for-nurses-as-staffing-bill-passes-assembly-102890), a statewide nurses' union with more than 37,000 members. The "Safe Staffing for Quality Care Act" passed the New York state Assembly by a 103-31 in June 2016, the first time a staffing ratio bill has passed either chamber of the state legislature.

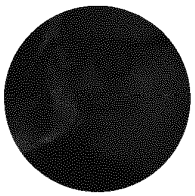
Emails asking for comment sent to John Turner and Brian Forrest, CMC vice presidents of public relations and human resources, respectively, were not returned. On October 25, I submitted a request to Turner for nursing staffing numbers and certain patient outcomes under the Nursing Care Quality Protection Act. (http://w3.health.state.ny.us/dbspace/NYCRR10.nsf/56cf2e25d626f9f785256538006c3ed7/95e2f0a856857ace85257dc1005611d4?OpenDocument&Highlight=0,400.25) CMC has until November 24 to produce those numbers.

Since April 2015, nurses at Cayuga Medical Center, Tompkins County's only hospital, have been organizing to form a union.

Local media coverage has been limited. Help support further stories on this issue from this independent reporter with a donation at the link (https://www.paypal.me/Truthsayers). Send me tips and suggestions at the email below.

Next in this series (http://www.truthsayers.org/tag/cayuga-medical-center/): Nurses say that CMC's practices in setting schedules and giving breaks are arbitrary, and in some cases illegal.

SPREAD TRUTH



Josh Brokaw is an independent reporter based in Ithaca, N.Y.
Email josh.brokaw@truthsayers.org with tips, story suggestions, and gentle criticism.
Twitter: @jdbrokaw

1 thought on "'Tragically, he died alone:' Cayuga Medical Center Nurses Say Staffing Levels Unsafe"

ARELY MELENDEZ |

OCTOBER 29, 2016 AT 4:53 PM
(HTTP://WWW.TRUTHSAYERS.ORG/2016/10/26/TRAGICALLY-HE-DIED-ALONE-CAYUGA-MEDICAL-CENTER-NURSES-SAY-STAFFING-LEVELS-UNSAFE/#COMMENT-7)

I belong to 1199 and it doesn't make a difference ratio of patients to staff dangerous. No one is stepping in to fix the situation. We are told to fill out unsafe staffing.

Comments are closed.

Back to top ⇈

Unionizing CMC RNs
October 26, 2016 ·

Another great article by journalist Josh Brokaw regarding the deplorable state of affairs at Tompkins County only hospital Cayuga Medical Center in Ithaca, NY.
Please read and share. This community needs to speak up and make a change to take back their hospital that serves them!

'Tragically, he died alone:' Cayuga Medical Center Nurses Say Staffing Levels Unsafe

Cayuga Medical Center nurses in critical care units say that the hospital's staffing patterns frequently put patients at risk. The nurses say there are often not enough…

TRUTHSAYERS.ORG

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5 Chronological

Patty Thayer Sad and angry and distressed and disappointed.
Like · Reply · 1 · October 26, 2016 at 5:47pm

TruthSayers

October 26, 2016 ·

Nurses at Cayuga Medical Center say staffing levels are unsafe, one of the primary reasons they started organizing to join a union.

Like this page and/or follow on Twitter @truthsayersnews for future installments in this series about the state of affairs at Tompkins County's only hospital.

- Josh Brokaw

‘Tragically, he died alone:’ Cayuga Medical Center Nurses Say Staffing Levels Unsafe

Cayuga Medical Center nurses in critical care units say that the hospital’s staffing patterns frequently put patients at risk. The nurses say there are often not enough…

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October 24, 2016 (http://www.truthsayers.org/2016/10/24/nurses-leaving-cayuga-medical-center-in-mass-exodus/)

Nurses Leaving Cayuga Medical Center in 'Mass Exodus'

HEALTH CARE (HTTP://WWW.TRUTHSAYERS.ORG/CATEGORY/HEALTH-CARE/), ITHACA (HTTP://WWW.TRUTHSAYERS.ORG/CATEGORY/ITHACA/), LABOR (HTTP://WWW.TRUTHSAYERS.ORG/CATEGORY/LABOR/)

By Josh Brokaw

"Mass exodus" are the most common words being used by current and former Cayuga Medical Center employees to describe the number of nurses who have been leaving Tompkins County's only hospital.

In his last three months at CMC, "you could practically hear the toilet running" as staffers took their talents to other hospitals, said Scott Marsland, an emergency department registered nurse [RN] who left CMC in May for Syracuse's Upstate University Hospital. "Still, there's good nurses there, but some of the best educated, most skilled nurses, the most independent thinking, they left. It's been a hemorrhage of intellect and experience."

According to Anne Marshall, of the 175 CMC nurses that had signed cards by autumn 2015 asking for a vote to join Service Employees International Union Local 1199, 40 have since left.

Evidence of staff leaving CMC is necessarily anecdotal. As a non-profit corporation, detailed information about CMC's staffing numbers and budget are not public. In addition, hospital staff who work entirely within one department can only be expected to know what's happening there; few nurses have many interactions with staff on other units or floors in most hospitals. That said, according to nurses interviewed for this story, turnover seems to be particularly high in the emergency department [ED], intensive care unit [ICU], and behavioral services unit [BSU], areas where there has also been strong support for unionization.

Cayuga Medical Center, October 2016. Photograph: Josh Brokaw

"Rhonda,"a former BSU nurse whose name we withhold because she wants to keep working in Tompkins County and fears reprisals, said there had been a "mass exodus" from her unit – often called the "psych ward" on the street – about the time she left in April 2016. A commenter on the Unionizing CMC Facebook group reported that three nurses left the BSU within the space of a couple weeks in March 2016. A schedule for July and August listed 19 nurses in total on the 26-bed unit, including nurses flexing from other departments and part-timers.

Marshall lists 13 nurses, including herself and another nurse terminated earlier this month, that have left the 16-bed ICU over the last year.

CMC RNs Fired: Policy Violation or Union Busting? Read the story about Marshall's

termination at the link. (http://www.truthsayers.org/2016/10/13/cmc-rns-fired-policy-violation-or-union-busting/)

Cristina Avalle, an ED nurse who left in June, reports that "11 of us left in one month alone, from May into June."

Cheryl Durkee, who's still working in the 19-bed ED, says her department has lost three-quarters of its nurses over the past six months or so, with two more leaving this week. There were 28 nurses on staff in spring 2015.

"I would say we've had 13 leave over the last six months or so," Durkee said. "It's unreal. When the new director of nursing came in a couple months ago she sat everybody down two by two to talk to us. The other nurse said 'I'm concerned about the amount of people who have left,' and [the director] said 'This is typical of any emergency department.' I said I've been working over 30 years as a nurse, and this is the furthest thing from typical in anywhere I've worked."

Belinda Howell, a RN who left the Ithaca Convenient Care center this past summer, said she was the third RN to leave the outpatient care center within four months. The Convenient Care center usually has two RNs on during days, Howell said, sometimes three, with four working on weekends or typically busy evenings. A large number of those RNs are paid per diem.

Michael Doan left CMC's cardiac catheterization laboratory this spring; at the time "four or five nurses were looking or moved into something else." When he left his director position in 2014 on the 4th floor, turnover was 40 percent yearly, with a goal of 20 percent, Doan said.

CMC's fourth floor contains a telemetry unit and medical beds, for a total of about 50 beds and 30 nurses, according to David Kraskow, a CMC RN since 1998. Turnover is expected at CMC, Kraskow said, particularly on the fourth floor, which employs at any one time a number – "maybe five, maybe eight" – of graduate nurses getting their first professional experience. Other nurses start at CMC on the fourth floor, and might be there for six months before moving onto a higher-intensity department like the ED or ICU. In former times, the understanding was that nurses had at least a year's experience before making that sort of move.

"A problem the union needs to address is people on our unit are floated to other units, where you do need more experience, but they don't have the staff," Kraskow said. "In those places the stakes are a bit higher – having experience really helps more in the outcomes."

Cayuga Medical Center nurse Cheryl Durkee tables in CMC cafeteria. Photograph via Facebook.

CMC administration has maintained that the rate of turnover is not unusual via in-house emails to staff. John Turner, CMC vice president for public relations, and Brian Forrest, vice president for human relations, did not return multiple calls and emails for this story asking for comment.

Alan Pedersen, former CMC vice president of human relations, wrote in a July 22, 2015 email that "It has been alleged that we reduced our nursing staffing levels on the 4th floor due to a budget crunch. **That is false.** Today, Cayuga Medical Center employs more nurses than at any time in our history …" [emphasis in the original].

In an email to CMC staff dated Sept. 24, 2015, Pedersen acknowledged that "Cayuga Medical Center, along with most other hospitals in upstate NY, continues to face challenges in filling positions. But, unlike many other hospitals we have been successful in continuing to attract Registered Nurses to our organization, and, many are in orientation as we speak.

"In fact since May, we have been able to hire more than 40 new RN's. Are there vacancies, yes. Are there any hospitals in upstate NY that don't have vacancies, no."

In an Aug. 9, 2016, email to staff reminding them "unionization is a matter of employee choice," Brian Forrest, who replaced the retired Pedersen on July 1, 2016, wrote that CMC strives "to create and maintain a culture of teamwork, mutual respect, cooperation and a patient-centered care among all staff. We believe this environment serves everyone's best interests and is one of the reasons that our turnover has been lower than the published statistics* about other facilities/areas." Forrest wrote that turnover for RNs leaving full-time or part-time jobs at CMC in 2015 was 11.3 percent, compared to a 14.3 percent estimate of turnover in central New York from a 2015 study by the Healthcare Association of New York State. (http://www.aacn.nche.edu/media-relations/nursing-shortage-resources/2015-NY-Workforce-Report.pdf)

The "published statistics" Forrest used also included a comparison of CMC's turnover rate to "53% in the heavily unionized Buffalo area and 31% in the Rochester Regional area," according to a document called "DataPoint: Nursing Staff Turnover Rates." Those numbers from Buffalo and Rochester appear to be taken from a summary of a study using 2013

numbers (http://www.leadingageny.org/topics/data/datapoints-archive/datapoint-nursing-staff-turnover-rates/) from LeadingAge NY, a trade group that was exclusively surveying nursing homes.

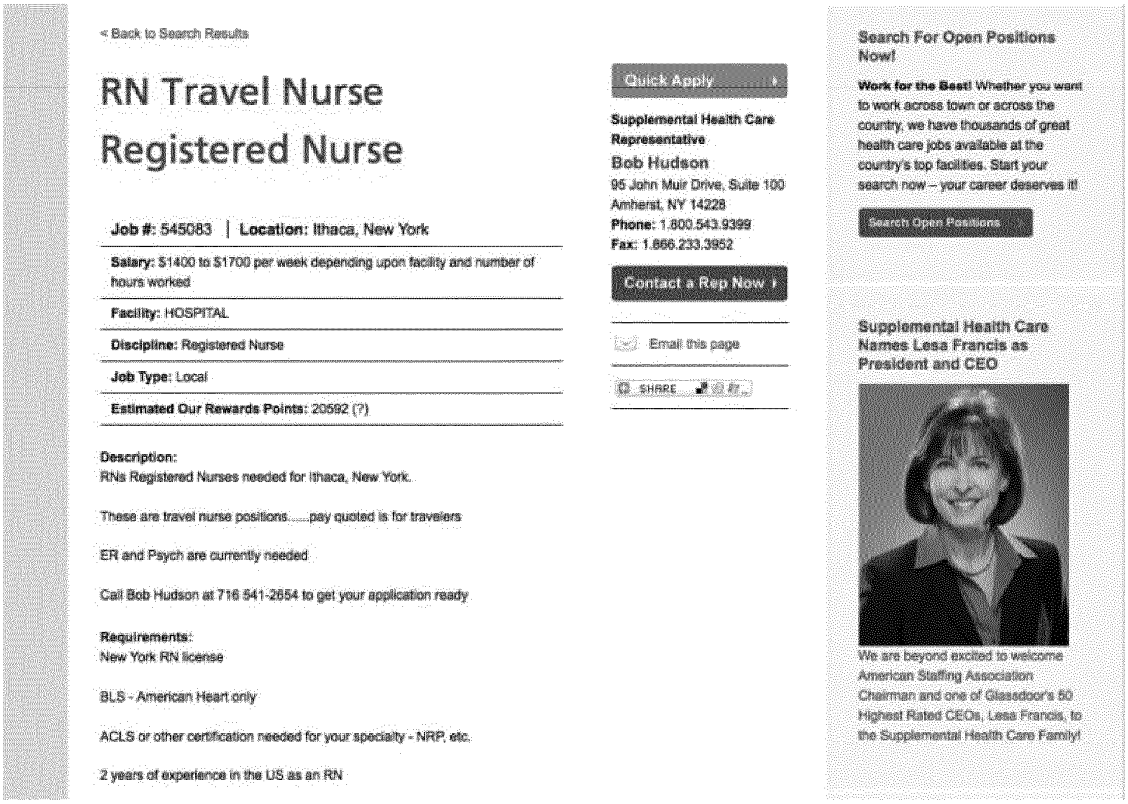
[Finding accurate and relevant numbers about RN turnover rates is difficult; as this 2014 study notes (http://www.futurity.org/nurses-high-turnover-762532/), "policy makers and managers concerned with finding comparable turnover rates face a daunting task to locate these rates. Reported RN turnover rates vary considerably over time, across settings, and by definitions used."]

Pedersen also noted in multiple emails in summer and fall 2015 that CMC had decided to use traveling nurses, with those travelers – who sign contracts for two or three months at a time – working in "Emergency, ICCU, Surgical Services and the Fourth Floor."

"Those individuals are here based on need and our commitment to support our staff," Pedersen wrote in September 2015.

Nurses who spoke for this story say that they had asked for CMC to bring in travel nurses to help with staffing gaps over recent years, but there was a policy in place restricting their use. When, exactly, that policy was instituted isn't clear: Durkee remembers it going into place when CEO John Rudd took over in 2013, while Marsland believes it was a cost-saving measure put into place by former CMC CEO Rob Mackenzie. Kraskow remembers a short-lived moratorium on using travelers as far back as 2000, which didn't stick for very long.

The clear incentive for a hospital to avoid using travel nurses is cost. An Aug. 25, 2016, job listing email from Fastaff, one of the travel nursing agencies CMC has contracted with, lists an opening for $48 an hour for an ED nurse on nights and weekends. Recent postings for a hospital in Ithaca by the agency Supplemental Health Care lists an hourly rate of $35 to $40 an hour for an ICU Rn (http://www.supplementalhealthcare.com/job/info/536970), plus travel pay as high as $1,600 per week and a sign-on bonus as high as $1,000. Other current postings by Supplemental Health Care list rates of $37 per hour for six-week psychiatric nurse contracts and $42 per hour for 13-week emergency room contracts. Housing and travel costs are also paid by staffing agencies, which are included in the fees they are paid by a hospital. CMC nurses guess that the hospital pays a total of $75 to $100 per hour to staffing agencies for a travel nurse. CMC nurses' pay comes in between about $25 and $30 per hour, according to their self-reporting.



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RN Travel Nurse
Registered Nurse

Job #: 545083 | **Location:** Ithaca, New York

Salary: $1400 to $1700 per week depending upon facility and number of hours worked

Facility: HOSPITAL

Discipline: Registered Nurse

Job Type: Local

Estimated Our Rewards Points: 20592 (?)

Description:
RNs Registered Nurses needed for Ithaca, New York.

These are travel nurse positions.....pay quoted is for travelers

ER and Psych are currently needed

Call Bob Hudson at 716 541-2654 to get your application ready

Requirements:
New York RN license

BLS - American Heart only

ACLS or other certification needed for your specialty - NRP, etc.

2 years of experience in the US as an RN

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Bob Hudson
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Amherst, NY 14228
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Supplemental Health Care Names Lesa Francis as President and CEO

We are beyond excited to welcome American Staffing Association Chairman and one of Glassdoor's 50 Highest Rated CEOs, Lesa Francis, to the Supplemental Health Care Family!

Screenshot of job posting at supplementalhealthcare.com, October 24, 2016.

Whenever the most recent prohibition on using travelers began, nurses say they only had a response to their requests for travel staffers after CMC administration became aware of the union organizing campaign in May 2015.

When Avalle started at CMC in March 2014, there were "no travelers whatsoever" working in the ED, she said.

"Can we bring in travelers to fill in gaps and make sure we're fully staffed every day?" Avalle said staff asked management during meetings. "'We're fully staffed, we can't afford them,' they said. Then the union came on and they started to bring on travelers."

"Not until they found out we were bringing in the union did they do something," Marshall said of travelers, while "nurses who weren't working enough hours and had to find other jobs were ignored. They were trying to get rid of union supporters and still are."

In the BSU, a nurse posted on Facebook that there were two travelers working there in November 2015, the first travelers used there since she started working on that unit in 2006.

As she was searching job sites this summer, Rhonda said she saw "no permanent positions listed for area and lots of travelers."

"My thought was this has to do with the union," Rhonda said. "Traveling staffers can't be swayed."

Durkee says that the emergency department is "practically 50 percent travelers" right now. When a patient was "coding" last week – in need of immediate resuscitation – "I had to ask for help and didn't know the two people's names I had to ask," Durkee said.

"At times when they've been rationalizing cutting [costs] elsewhere," Kraskow said of CMC administration, "they've said they're spending five million on travelers, they cost at least 100 percent more. It's extraordinarily clear they're happy to have travelers now, as they don't have to deal with 'those people,' like me, who are here for the long run."

"They get rid of all the union people and think we can start all over again," Durkee said of the CMC administration's mindset. "One of the managers said to me, 'Yes, it is a crisis.' I asked him to say one thing the next time someone resigns: 'What can we do to get you to stay?' What they've been saying is 'You better give two weeks' notice or you won't get paid for vacation time.'"

"The fact is management does not care," Durkee said. "If only, the thing I'm sure they care about is they pay more money to travelers and care less about nurses who left. These nurses had a lot of experience, really good, intelligent, skilled nurses have left. They've replaced them with travelers, who aren't staying – they're not vested in this community."

Since April 2015, nurses at Cayuga Medical Center, Tompkins County's only hospital, have been organizing to form a union.

Local media coverage has been limited. Help support further stories on this issue from this independent reporter with a donation at the link

(https://www.paypal.me/Truthsayers). Send me tips and suggestions at the email below.

Next up in this series: Cayuga Medical Center nurses say they are organizing in large part because staffing ratios for nurses and security are unsafe.

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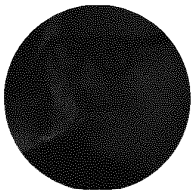


Josh Brokaw is an independent reporter based in Ithaca, N.Y. Email josh.brokaw@truthsayers.org with tips, story suggestions, and gentle criticism.
Twitter: @jdbrokaw

4 thoughts on "Nurses Leaving Cayuga Medical

Center in 'Mass Exodus'"

KELLY

OCTOBER 24, 2016 AT 4:49 PM (HTTP://WWW.TRUTHSAYERS.ORG/2016/10/24/NURSES-LEAVING-CAYUGA-MEDICAL-CENTER-IN-MASS-EXODUS/#COMMENT-3)

I left for other reasons. Mainly workplace lateral violence, as did another nurse. The VP of HR did nothing about the situation. Good people leave, and the troublemakers still have jobs. Not to mention the fact management does not care. Swept under the rug.

Pingback: 'Tragically, he died alone:' Cayuga Medical Center Nurses Say Staffing Levels Unsafe – TruthSayers (http://www.truthsayers.org/2016/10/26/tragically-he-died-alone-cayuga-medical-center-nurses-say-staffing-levels-unsafe/)

JOYCE BLEIWEISS

OCTOBER 27, 2016 AT 9:51 PM (HTTP://WWW.TRUTHSAYERS.ORG/2016/10/24/NURSES-LEAVING-CAYUGA-MEDICAL-CENTER-IN-MASS-EXODUS/#COMMENT-6)

I wonder how many people have been hired or received pay raises in the administrative wing.or who received bonuses while the nurses received nothing?

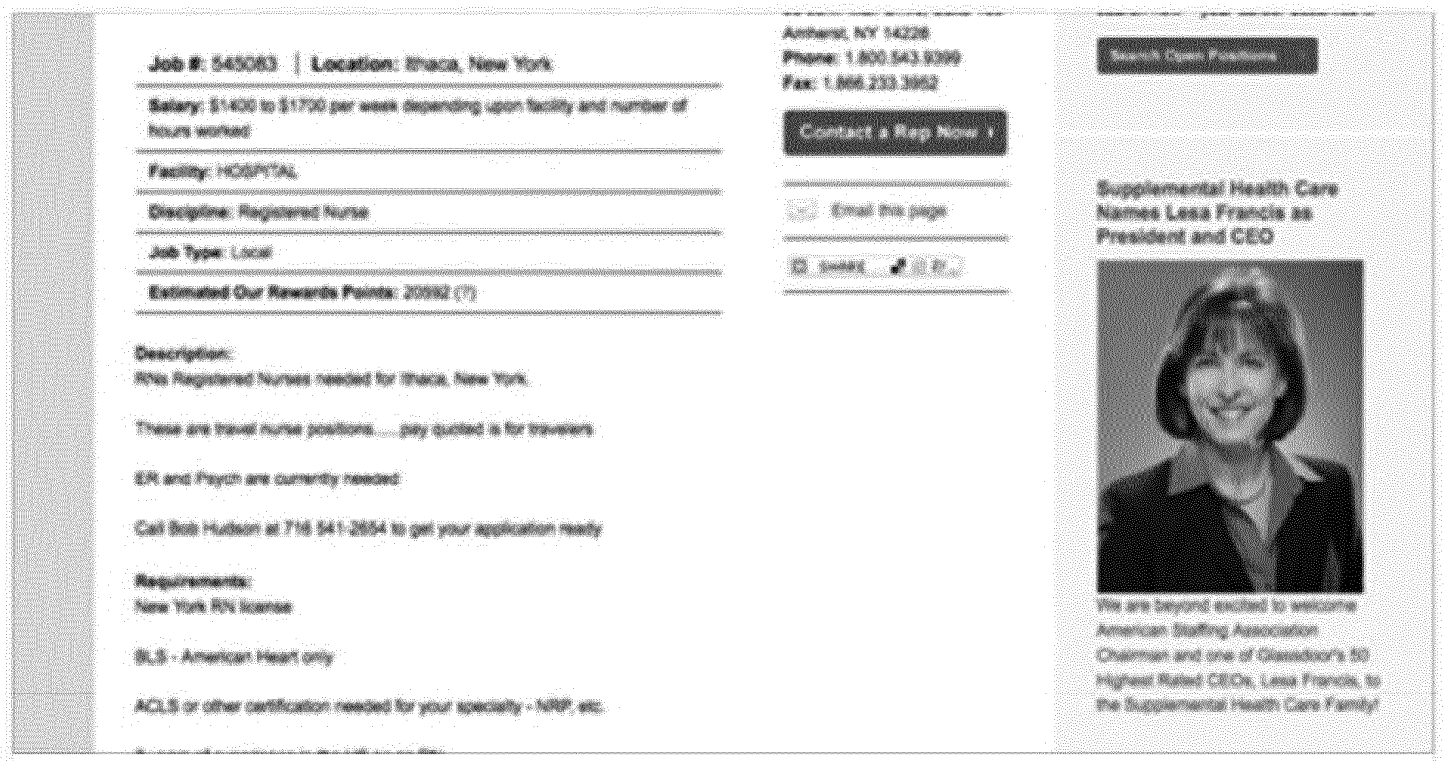
Pingback: Union Busting? Cayuga Medical Center Hearings, Day Four – TruthSayers (http://www.truthsayers.org/2017/01/12/union-busting-cayuga-medical-center-hearings-day-four/)

Comments are closed.

Unionizing CMC RNs

October 24, 2016 ·

I am posting this article here to educate people in our community that rely on this hospital as to what is actually going on there. I know we all see the glossy ad campaign. It's beautiful. There are even great aspects to this hospital and wonderful care givers, but there is a huge issue with quality care in certain departments and they are being staffed by nurses with no vested interest in this community. This hospital has fired and pushed out some of its most experienced ... See More



Job #: 545083 | Location: Ithaca, New York

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Job Type: Local

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These are travel nurse positions.....pay quoted is for travelers

ER and Psych are currently needed

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Requirements:
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BLS - American Heart only

ACLS or other certification needed for your specialty - NRP, etc.

Amherst, NY 14226
Phone: 1.800.543.9399
Fax: 1.866.233.3952

Contact a Rep Now

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Supplemental Health Care Names Lesa Francis as President and CEO

We are beyond excited to welcome American Staffing Association Chairman and one of Glassdoor's 50 Highest Rated CEOs, Lesa Francis, to the Supplemental Health Care Family!

Nurses Leaving Cayuga Medical Center in 'Mass Exodus'

"Mass exodus" are the most common words being used by current and former Cayuga Medical Center employees to describe the number of nurses who have been leaving Tompkins County's only hospital. In h…

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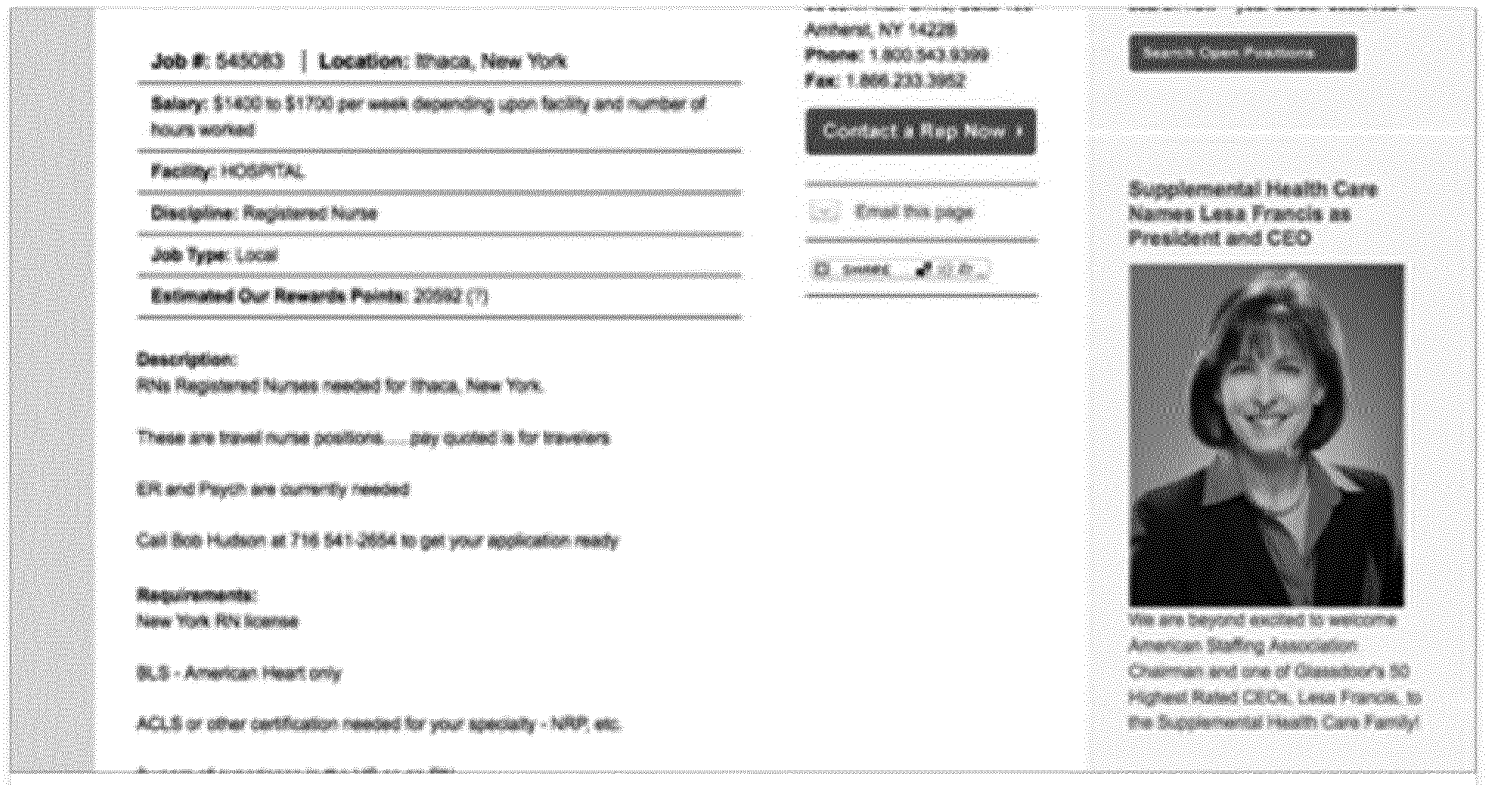
11

reasons for organizing to join SEIU Local 1199. One of the first things many said to me was there's been a recent "mass exodus" of staff at CMC.

This story is the first of a 5- to 15-part series about the state of affairs at Tompkins County's only hospital. Like this page and/or follow on Twitter @truthsayersnews for future installments.

- Josh Brokaw



Nurses Leaving Cayuga Medical Center in 'Mass Exodus'

"Mass exodus" are the most common words being used by current and former Cayuga Medical Center employees to describe the number of nurses who have been leaving Tompkins County's only hospital. In h…

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10 Chronological

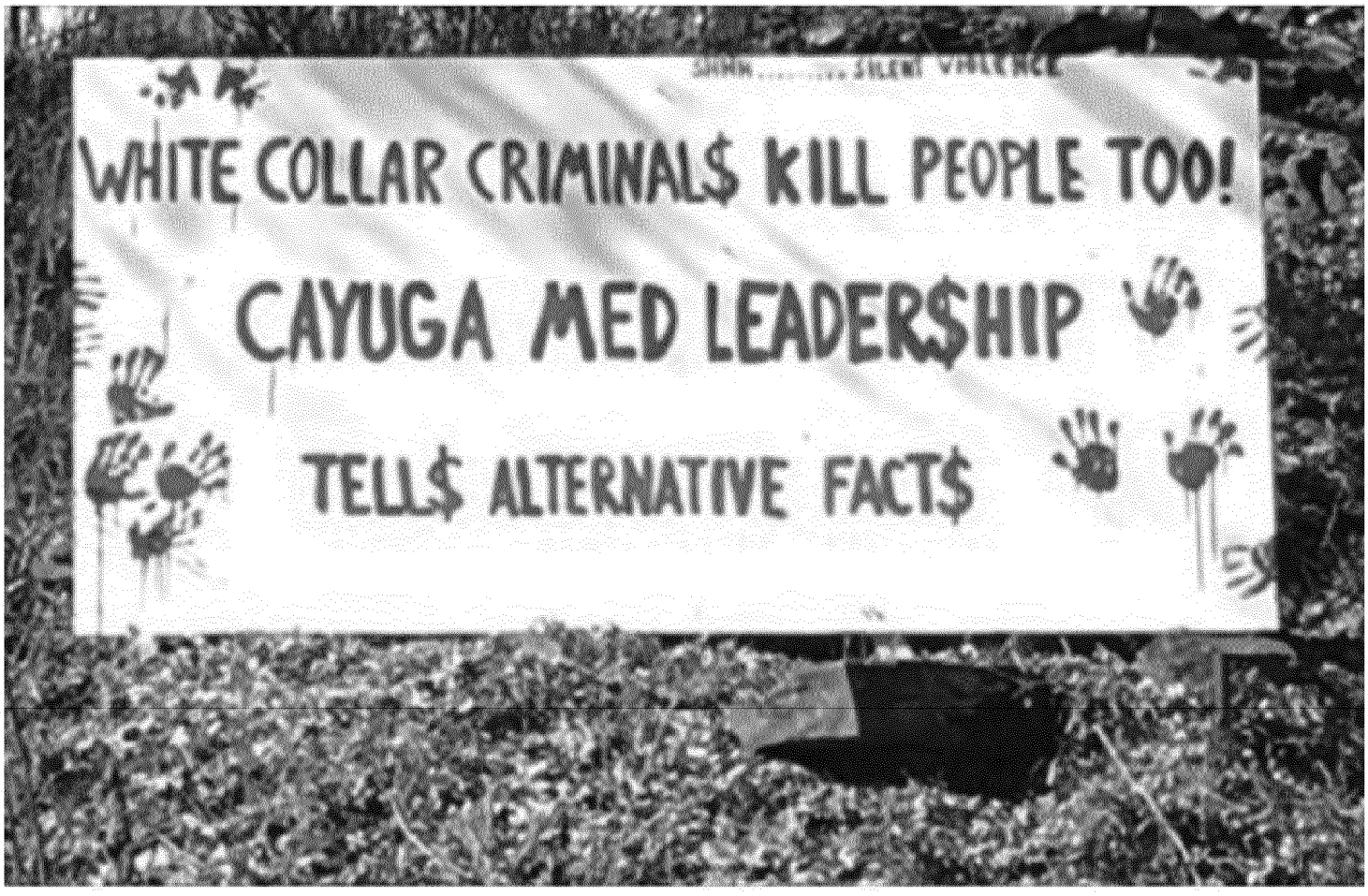
16 shares

Chris Nielsen Berg This might explain why my daughter has had to wait for

Unionizing CMC RNs

February 20 at 12:23pm ·

Saw this signs about Cayuga Medical Center while driving through Ithaca today!



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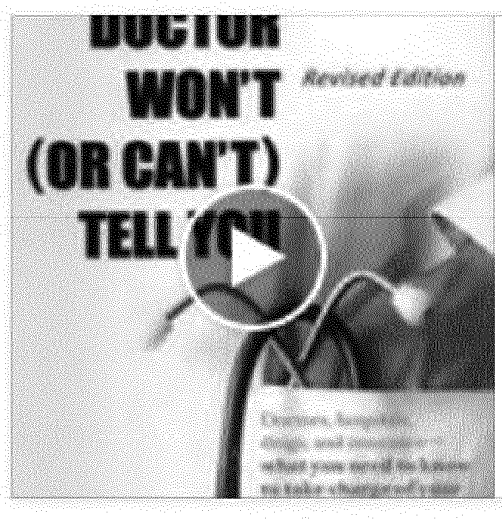
Unionizing CMC RNs shared Evan Levine's post.
February 5 at 11:34am ·

Once again Cayuga Medical Center's
Ethics and treatment of patients and nurses is under fire!
"CMC proud" I don't think so!!!!
I feel most sorry for the patient and their family who has no idea how he died and for the great nurse who was set up to fail then hung out to dry by CMC. Administration again lays blame on the nurses and take no responsibility!

Evan Levine shared a link to the group: Real Medicine.
February 5 at 10:39am ·

A patient dies in an Emergency Room waiting area and no one is there to see it.

The nurse gets blamed.



Waiting To Die In An ER Waiting Room

The last place you would expect anyone to die, unexpectedly, is in a Emergency Room Waiting Area. This tragic story, told to me by nurses who…

WWW.PODOMATIC.COM

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Unionizing CMC RNs

February 9 at 8:25pm ·

http://www.ithaca.com/.../article_a6934c34-eeff-11e6-8875-eb2...

What led to a patient's death at CMC? Administration, nurses present accounts

A little past 6 p.m. on January 19, a 52-year-old man was brought into the emergency room of Cayuga...

WWW.ITHACA.COM

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Unionizing CMC RNs
February 9 at 8:34pm ·

The only story in town not have a direct John Rudd quote, alas. Also the only one with the whole triage policy.
Cayuga Medical Center

Cayuga Medical Investigation Update: Joint Commission Investigating, ER Nurses Talk Triage

Since Truthsayers' story on a patient dying in the Cayuga Medical Center emergency department waiting room was published Monday afternoon, we have received…

TRUTHSAYERS.ORG

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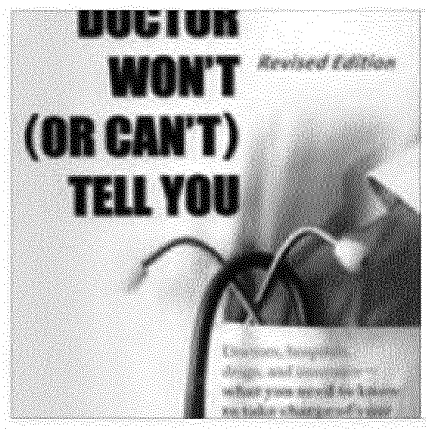
Unionizing CMC RNs

February 11 at 8:46am ·

It's time for the CEO, John Rudd, and the Board of Directors of Cayuga Medical Center Ithaca, NY to take responsibility for their role in the disintegration of this community hospital!
IT IS TIME TO STEP DOWN!

https://l.facebook.com/l.php…



Why Fire Nurses Instead Of The CEO???

Recurrent mishaps at Cayuga Medical Center, in Ithaca New York, has resulted in recurrent firings of their nurses. As a result many seasoned nurses have left…

PODOMATIC.COM

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1 share

Unionizing CMC RNs

February 15 at 9:04am ·

"... the family is very upset to learn about the many breakdowns that occurred. You have nurses publicly stating they told management that they were not adequately staffed nor were they trained on hospital procedures. At the same time you have management blaming a nurse for falsifying triage documentation and not following hospital procedures. Words cannot describe my family's anger and frustration with everything we are learning.

Family's Attorney Investigating ER Waiting Room Death at Cayuga Medical

Jeff DeFrancisco, a Syracuse-based personal injury lawyer, announced in a Feb. 15 press release sent out to media on Wednesday morning that he has retained by…

TRUTHSAYERS.ORG

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Unionizing CMC RNs

January 3 ·

https://www.facebook.com/iamnickreynolds/posts/870165836454236

Cayuga Medical Center Faces Second NLRB Hearing

Cayuga Medical Center will once again be the focus of a hearing before the National Labor Relations Board on January 9 this time not regarding allegations of anti-unionization, but on

WWW.ITHACA.COM

Unionizing CMC RNs shared a link.

January 9 ·

Federal Labor Law Broken? Cayuga Medical Center Hearing, Day One

By Josh Brokaw Attorneys for the National Labor Relations Board [NLRB] and Cayuga Medical Center [CMC] made their opening statements on Monday…

TRUTHSAYERS.ORG

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1 share

Unionizing CMC RNs shared Ithaca Voice's post.

January 9 ·

Ithaca Voice

January 9 ·

The National Labor Relations Board is holding a hearing in Ithaca this week to examine claims that Cayuga Medical Center fired two nurses for their union involv...

See More

NLRB examines claims that Cayuga Medical Center fired 2 nurses for union activities

ITHACA, N.Y. — The National Labor Relations Board is hearing a case this week regarding two nurses who were terminated at Cayuga Medical Center.

ITHACAVOICE.COM

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Unionizing CMC RNs

November 2, 2016 ·

Today's article from the Ithaca Voice!
I hope we are finally opening the eyes of this community regarding the hospital that is serving them! This can no longer be allowed to happen. This community needs to stand up and take back their hospital! The community has a right to quality care and patient safety!

Federal judge decides Cayuga Medical Center violated labor laws

ITHACA, N.Y. -- Last week, a federal judge sided with Cayuga Medical Center nurses who said the hospital broke labor laws while workers were attempting to form a…

ITHACAVOICE.COM

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Unionizing CMC RNs
November 8, 2016 ·

http://m.ithaca.com/…/article_7b5c75ae-9fa9-11e6-8b93-d3d87…

Federal court rules in favor of CMC nurses

A federal judge has ruled Cayuga Medical Center violated federal labor law in fighting its worker's right to unionize, court documents say.

M.ITHACA.COM

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13 Chronological

Patty Thayer Congratulationd.
Like · Reply · 1 · November 8, 2016 at 1:17pm

Patty Thayer Congratulations
Like · Reply · 1 · November 8, 2016 at 1:17pm

Unionizing CMC RNs shared a link.

November 22, 2016 ·

Cayuga Medical Center Charged With More Labor Law Violations

By Josh Brokaw The National Labor Relations Board is charging Cayuga Medical Center with more unfair labor relations practices. An "amended charge" letter was…

TRUTHSAYERS.ORG

Unionizing CMC RNs
October 11, 2016 ·

Tune in tomorrow morning at 7:25 until 8:00 when Mark Bergen, VP 1199, and Anne Marshall RN speak about the issues, concerns, and state of affairs at Cayuga Medical Center!!

Like Comment Share

5

Unionizing CMC RNs
October 12, 2016 ·

This literally made me I'll!!!
Wish they valued there own employees who live in this community and paid them this! And by the way these workers have a contract!!!

ICU Registered Nurse Needed

Type: Travel
Specialties: ICU/CCU
Location: Ithaca, NY
We are currently seeking a motivated and experienced ICU Registered Nurse for a contract position in Ithaca, NY.

RN Job Description:
ICU RN
36-40 hour weeks
13 week travel RN contract
Days and Night RN shifts available

Local Pay: $35-$40/hr

Travel Pay: $1,400 - $1,600 / wk after taxes
Bonus: Up to $1,000 completion bonus

Ithaca, New York | ICU Registered Nurse Needed | Supplemental Health Care

Make an informed choice. Spend a few minutes looking us over – learn how we work, see what we offer and discover what we can do for your career. It will be…

SUPPLEMENTALHEALTHCARE.COM

Like Comment Share

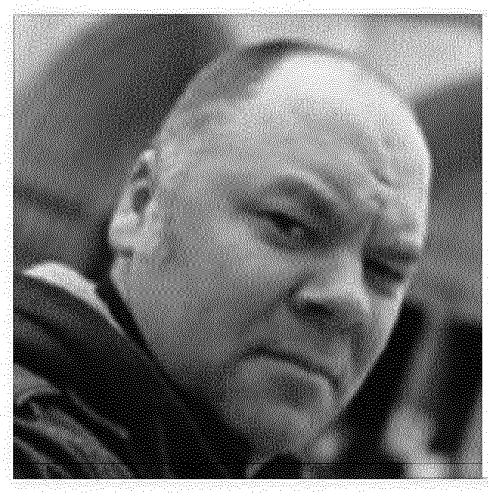
1

Unionizing CMC RNs

October 12, 2016 ·

For all who may have missed the live broad cast this morning...This is the link for this mornings show, the Ithaca and Watkins Glen Morning Show with Jim Murphy. Our part runs from 7:20 am to 8:00am

<http://www.radiofreeamerica.com/station/wrfi>



Radio Free America - Station

WRFI exists to inform and entertain and will always be community owned and operated, providing access to the airwaves and an opportunity to learn the craft of radio while serving the general well-being of its community. The station strives to cultivate and promote

WWW.RADIOFREEAMERICA.COM

Like Comment Share

1


Unionize CMC RNs Now!
Unionizing CMC RNs
October 12, 2016 ·
Thank you to Jim Murphy and WRFI for a wonderful interview this morning.
Thank you to Mark Bergen for joining me in this informative interview!
Like
Comment
Share
1

Unionizing CMC RNs
October 14, 2016 ·

A new story written by journalist Josh Brokaw about the never ending saga of
Cayuga Medical Center Ithaca, NY!
Let the truth be told!

CMC RNs Fired: Policy Violation or Union Busting?

By Josh Brokaw Anne Marshall, one of the most prominent organizers in the effort to unionize Cayuga Medical Center's staff, is no longer working at Tompkins County's only hospital. Mars…

TRUTHSAYERS.ORG

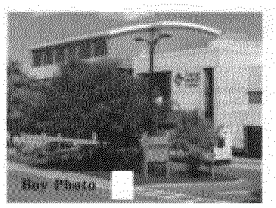
Like Comment Share

5

DEATH IN WAITING ROOM: State probes ER fatality at CMC

Matt Weinstein , mweinstein@ithacajournal.com | @SteinTime44 Published 4:37 p.m. ET Feb. 8, 2017 | **Updated 9:42 a.m. ET Feb. 11, 2017**

A man died in the waiting room of the Cayuga Medical Center Emergency Department, resulting in a nurse's termination



(Photo: SIMON WHEELER / Staff Photo)

A travel nurse's contract was terminated and the New York State Department of Health has opened an investigation following the death of a patient last month in the Emergency Department waiting area at Cayuga Medical Center.

Cayuga Medical Center President and CEO John Rudd said the patient's death occurred "as a result of a series of breakdowns" in procedure on Jan. 19, and changes in protocol began being implemented the following day. Rudd also added the hospital is fully cooperating with the Department of Health's investigation. The names of the patient and nurse were not released.

According to CMC officials, the patient — a 52-year-old male — arrived to the Emergency Department at 6:07 p.m. by Bangs Ambulance after he was discovered sleeping on the floor of a convenience store. He had initially refused the ambulance, but EMS returned soon after speaking to the Ithaca Police Department and then talked the man into being checked out at the hospital. He was alert and communicating with staff upon arrival to the CMC, according to Vice President of Medical Affairs David Evelyn, who also noted the man got himself off the ambulance stretcher and into the wheelchair at the hospital.

When a patient comes to the Emergency Department, an assigned nurse performs triage to determine how quickly the patient needs to be seen, and a number between 1 and 5 is assigned. This includes a series of questions and a documentation of vital signs. A 1 is given to extreme emergencies like a heart attack or stroke, while a 5 is for ankle sprains or minor cuts. The man, who did not show any signs of distress at the hospital, was assigned a 4 by the nurse assigned to triage on Jan. 19 — the same female nurse whose contract would be terminated — and was wheeled into the waiting room. He was discovered unresponsive at 8:23 p.m. and ruled dead after an attempt to resuscitate him was not successful.

Evelyn said the hospital began investigating the incident the following day, including interviewing staff and patients in the area at the time, and viewing footage from security cameras to nail down the sequence of events.

STEP UP: How to help 3-year-old with cancer (http://www.pressconnects.com/story/news/connections/2017/01/27/child-cancer-support/97132638/)

How Ithaca Underground changed the city's music scene (http://www.ithacajournal.com/story/entertainment/2017/02/07/ithaca-underground-mark-years/97616804/)

"Through the investigation, it became apparent the nurse falsified her triage documentation," said Evelyn, who noted the Emergency Department was not overly crowded at the time. "She did not ask him those questions, she did not take those vital signs that she had put into the records, so she had falsified the records. On the tape, we can see (the patient) was looking around for a certain part of time he was there, but eventually, he just looks like he's sitting there. People in the room said it appeared he was asleep."

Evelyn said the CMC contacted the Department of Health and the medical examiner. The results of a forensic autopsy have not been released. Officials at the CMC have met with the man's family several times to provide updates in the investigation, Rudd said.

The termination of the contracted travel nurse, who was not a new employee at the CMC, came as a result of video evidence and interviews, according to Rudd, who said the patient's entire visit is on video except for three minutes in a patient care area, which does not have cameras.

"She said (triage) was done in the waiting room," Evelyn said. "We see him in the waiting room, but the two hours he's in the waiting room, the nurse doesn't approach him at all. Vital signs are logged when he's already in the room, and she was at a desk."

Evelyn said the man's vitals were not taken during the three-minute window he is not shown on camera, according to eyewitness testimony.

"She chose to put in falsified documentation as far as vital signs ... when she never touched the patient," said Dep Raupers, vice president of patient services and chief nursing officer, who added about a third of the nurses used are contracted. "That's something that is reportable to the state under our nursing license. It has to go to the office."

Raupers said the hospital has already made several changes to protocol and will continue to examine ways to change processes to prevent any similar incidents from occurring. The hospital now has an assigned triage nurse who will cover the waiting room area at all times, in addition to re-educating nurses about triage policy. The assigned nurse also will engage with the patients and reassess initial diagnosis after a certain amount of time.

Officials at the hospital also have introduced safety briefings for all shifts and re-education on the escalation process. Raupers said the hospital is also working with regional EMS about proper procedures when bringing patients to the Emergency Department. The hospital also split staff into four work teams to improve workflow in the waiting room, and get patients into a bed and with a provider faster. An external consultant is being brought in to evaluate all Emergency Department operations.

"Obviously, this is a serious event, and we view it as a defining moment for us to say how do we look at our processes and how do we change processes so something like this will never happen again," Rudd said.

Follow @SteinTime44 (file:///C:/Users/mweinste/Desktop/twitter.com/steintime44) on Twitter

Read or Share this story: http://ithacajr.nl/2kPiaak

Unionizing CMC RNs added an event.

December 14, 2016 ·

JAN
9

NLRB Hearing #2 Against Cayuga ...

Jan 9 - Jan 13 · Tompkins County Courthous...

10 people interested

★ Interested

Like Comment

6

Unionizing CMC RNs This will be the second of our NLRB hearings where CMC nurses are being fought by the hospital administrators regarding their rights to organize for a contract! We've won the first case, and we have no doubt we will win this one also! Fill this courtroom and tell Cayuga Medical Center to stop spending your money to fight its own nurses! To this community take back YOUR hospital!

Like · Reply · 1 · December 14, 2016 at 10:17am

Anne Ulbrich Marshall
February 6 at 3:39pm · King Ferry

More on the death at Cayuga Medical Center
http://l.facebook.com/l.php…

Under Investigation: Patient Death in Cayuga Medical Waiting Room

By Josh Brokaw The death of a patient who was awaiting care at Cayuga Medical Center's emergency department is under state investigation. The New York State…

TRUTHSAYERS.ORG

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14

36 shares

Linda Sheldon Petak Pm me....
Like · Reply · February 7 at 6:15am

Anne Ulbrich Marshall Will do
Like · Reply · February 8 at 11:31am

Write a reply...

Rachael Lynn My heart breaks for this nurse!
Like · Reply · 3 · February 7 at 6:31am

Anne Ulbrich Marshall She is great! It's beyond sad!
Like · Reply · 2 · February 7 at 7:58am

Write a reply...

Michelle Smoyer Adelewitz Do they still pretend they have a culture of safety? OMG. The one who points the finger fastest wins, apparently. Smh.
Like · Reply · 1 · February 7 at 10:31pm

Anne Ulbrich Marshall They are the great pretender!
Like · Reply · February 8 at 7:28am

Write a reply...

Jocelyn Baker And this, is why nurses need unions. So sad all around. Ugh
Like · Reply · 2 · February 8 at 3:33pm

Anne Ulbrich Marshall One of the reasons we were pushing for a Union because administration would not listen to us or make changes regarding patient safety. Sadly it's not a question of if but when this will happen again!
Like · Reply · 1 · February 8 at 3:52pm

Unionizing CMC RNs shared Anne Ulbrich Marshall's post.
February 6 at 3:59pm ·

Anne Ulbrich Marshall
February 6 at 3:59pm · King Ferry ·

More on the death at Cayuga Medical Center
http://l.facebook.com/l.php…

Under Investigation: Patient Death in Cayuga Medical Waiting Room

By Josh Brokaw The death of a patient who was awaiting care at Cayuga Medical Center's emergency department is under state investigation. The New…

TRUTHSAYERS.ORG

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Unionizing CMC RNs shared a post.
February 9 at 8:46am ·

What does a huge advertising budget with the Ithaca Journal get you? A completely one sided story for the front page regarding an horrific event as told only by Cayuga Medical Center administration. I wish this reporter had just even attempted to get the nurses' side of the events and information regarding the problems at Cayuga Medical Center, but he did not. This is truly censorship of the news paid for with the advertising dollars of big business! As this article states ... See More

Anne Ulbrich Marshall commented on an article.
February 9 at 8:43am ·

What does a huge advertising budget with the Ithaca Journal get you? A completely one sided story for the front page regarding an horrific event as told only by...

See More

DEATH IN WAITING ROOM: State probes ER fatality at CMC

A man died in the waiting room of the Cayuga Medical Center Emergency Department, resulting in a nurse's termination

WWW.ITHACAJOURNAL.COM

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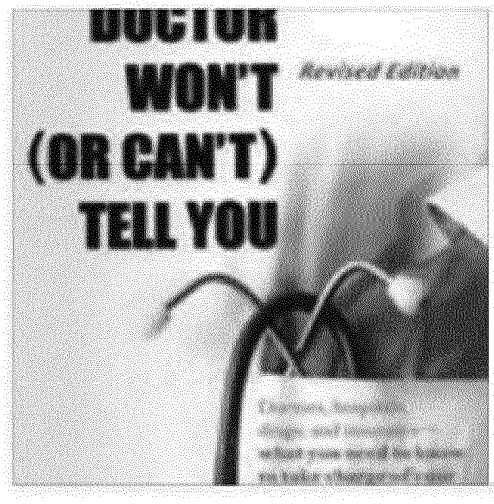
Unionizing CMC RNs shared Anne Ulbrich Marshall's post.
February 9 at 2:13pm ·

Please listen to and share widely Dr. Levine's latest podcast, a follow up to this mornings article in the Ithaca Journal regarding the patient's death in the waiting room at Cayuga Medical Center. When the CEO says a "series of break downs in the system occurred", and at many levels why are they holding only one person responsible! They have thrown this ER nurse under the bus and as an administration have taken no responsibility. It's time for this administration and board to step down!

Anne Ulbrich Marshall
February 9 at 2:12pm ·

Please listen to and share widely Dr. Levine's latest podcast, a follow up to this mornings article in the Ithaca Journal regarding the patient's death in the w...

See More



Hospital Admits: Death occurred as result of series of breakdowns

According to report published in the Ithaca Journal, John Rudd, the CEO of CMC, admitted that a patient's death in his hospital waiting room was…

PODOMATIC.COM

Like Comment Share

2

February 13 at 8:19pm ·

I'm more than disappointed about this one sided story. The nurse who was terminated is not the problem. She was made the scapegoat for the mistakes of Cayuga Medical Center's administration. Once again I will say she TOOK THE PATIENT'S VITAL SIGNS! He unfortunately died, as the CEO states himself, from a series of breakdowns. One nurse is not responsible for a series of breakdowns. However, an administration who was warned that this would happen months ago is! (see an art... See More

Anne Ulbrich Marshall
February 13 at 8:13pm · Ithaca Journal ·

I'm more than disappointed about this one sided story. The nurse who was terminated is not the problem. She was made the scapegoat for the mistakes of Cayuga Me...

See More

DEATH IN WAITING ROOM: State probes ER fatality at CMC

A man died in the waiting room of the Cayuga Medical Center Emergency Department, resulting in a nurse's termination

WWW.ITHACAJOURNAL.COM

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Anne Ulbrich Marshall commented on an article.
February 9 at 8:43am ·

What does a huge advertising budget with the Ithaca Journal get you? A completely one sided story for the front page regarding an horrific event as told only by Cayuga Medical Center administration. I wish this reporter had just even attempted to get the nurses' side of the events and information regarding the problems at Cayuga Medical Center, but he did not. This is truly censorship of the news paid for with the advertising dollars of big business! As this article states per CEO John Rudd, " it occurred as a result of a series of breakdowns." This is not the fault of one nurse! Although, she was the sole person blamed for the event and subsequently terminated. Administration has taken no responsibility for their part in the "series of breakdowns." I assure you none of them have been terminated!
If you would like the story from our side please listen to this podcast and read this article! In both these stories the reporters asked the hospital for comments and they declined to give any. I wish we were given the same courtesy here!
https://l.facebook.com/l.php…
http://l.facebook.com/l.php…

DEATH IN WAITING ROOM: State probes ER fatality at CMC

A man died in the waiting room of the Cayuga Medical Center Emergency Department, resulting in a nurse's termination

WWW.ITHACAJOURNAL.COM

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Jim Adsitt Well put and more true than people want to believe
Like · Reply · 3 · February 9 at 9:16am

Judy Holley This has happened previously ..
Like · Reply · 1 · February 9 at 9:51am

Anne Ulbrich Marshall When?
Like · Reply · February 9 at 12:39pm

Write a reply...

David Wheeler Looks like there is more trouble brewing at the Cayuga. Medical Center. A single nurse cannot be responsible for everything going on in the ER section,where were the other responsible ER medical staff? Why was that nurse fired without a through hearin... See More
Like · Reply · 5 · February 9 at 12:39pm · Edited

Stephanie Czeiszperger-Kaminsky It is not in that nurses best interest to go to the press with her story. She needs a lawyer. Anything she says could be held against her. I believe I already read an article where she did speak to the press and said some things claiming some responsibility. Again, not in her best interest.
Like · Reply · 1 · February 9 at 1:35pm

Unionizing CMC RNs shared Anne Ulbrich Marshall's post.
November 18, 2016 ·

Anne Ulbrich Marshall
November 18, 2016 · King Ferry ·

The Regional office of the NLRB has once again made a formal decision to issue complaint on the suspensions and terminations of two nurses at Cayuga Medical Cen
...

See More

Like Comment Share

6

Unionizing CMC RNs
October 14, 2016 ·

This statement is in response to questions regarding my resignation from Cayuga Medical Center in Ithaca, NY

Many nurses throughout CMC have been pulled into group meetings by nurse administrators and have been given information about a recent event regarding a blood transfusion that occurred in the ICU a few weeks ago. This has raised several questions among the nurses at CMC, and in fact many of you have contacted me regarding this issue wanting to know the facts. I felt b... See More

Like Comment Share

2 Chronological

Ethical U.S. Medical: $ystem Change NOW UPDATE: Anne Ulbrich Marshall --- a well Respected, Long-Time community known NURSE at the hospital was FIRED 2 DAYS AFTER her post speaking out against terrible hospital practices, and for exercising her Right to organize!

Perhaps she's got a good "New York State Whistle Blower's LAWSUIT" against these LYING, CHEATING Hospital EXECS?

LET'S FIND OUT ?

1- http://www.op.nysed.gov/.../nurse/nurse-whistleblowerlaw.htm

Keep Us Posted.
Their PR positioning is weak, foolish,
and probably proves your suit

(but -- DO seek professional legal assistance!!! Get the most notorious healthcare attorney in Central New York! CMC will literally PAY for this enormous, and obviously abusive mistake. The BEST Healthcare Lawyer in the business in your region is likely to take you on a 'contigency' on this EASY case --- but this is NOT official 'legal advice' ---> SEEK the right professional to handle them Show them all documents --- especially JOHN TURNER & KAREN AMES' public statements --- then explain what really goes on there & what really happened!!!)

2- http://www.workplacefairness.org/whistleblower...

3- https://www.nysba.org/.../WHISTLEBLOWERPROTECTION.html

LOOKING so very FORWARD to how
JOHN TURNER & KAREN AMES --- liars & crooks --- do under oath . . . since they suck so much at PR / lying for crooks for a living

We'll likely see soon enough...
...and their "story" is FULL of holes.

THAT'S the GOOD NEWS
Time unfolding, is sometimes, so sweet.....

.... until then though, you may want to keep most other public statements on the incident TO YOURSELF (for reasons your Lawyer might best explain).

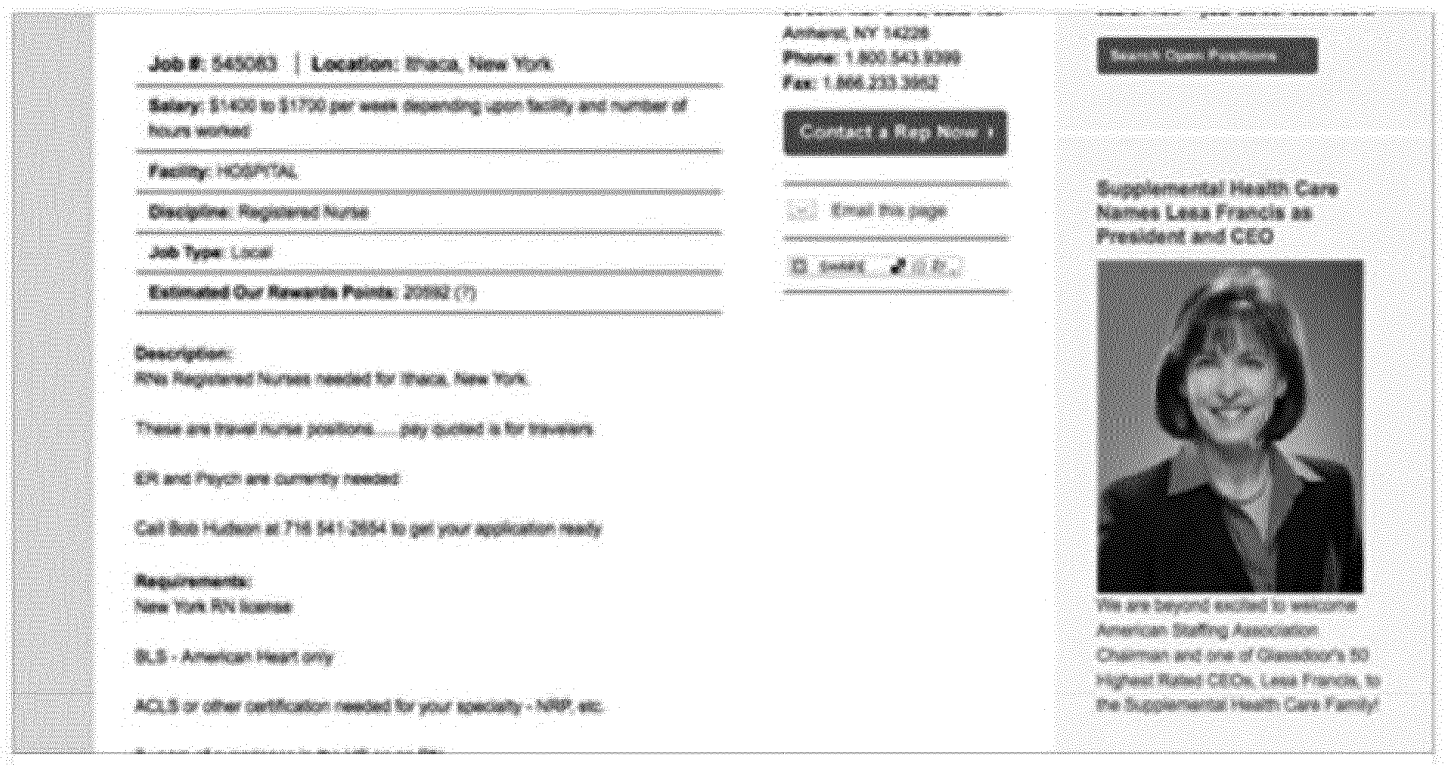
JOHN TURNER & KAREN AMES just screwed CMC execs pretty terribly. Please make sure the TOUGHEST healthcare Lawyer in your REGION is contacted for this particular case and Keep Fighting the Good Fight!

Like · Reply · 1 · October 20, 2016 at 9:18pm · Edited

Unionizing CMC RNs

October 24, 2016 ·

I am posting this article here to educate people in our community that rely on this hospital as to what is actually going on there. I know we all see the glossy ad campaign. It's beautiful. There are even great aspects to this hospital and wonderful care givers, but there is a huge issue with quality care in certain departments and they are being staffed by nurses with no vested interest in this community. This hospital has fired and pushed out some of its most experienced ... See More



Nurses Leaving Cayuga Medical Center in 'Mass Exodus'

"Mass exodus" are the most common words being used by current and former Cayuga Medical Center employees to describe the number of nurses who have been leaving Tompkins County's only hospital. In h…

TRUTHSAYERS.ORG

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11

Unionizing CMC RNs shared Anne Ulbrich Marshall's post.

September 23, 2016 ·

Please take the time to read and share this article about you community hospital!
You'll be amazed what really going on up there!

Anne Ulbrich Marshall
September 23, 2016 · Medium ·

This is an excellent article! Please read and share with all!

When Hospital Leadership Fails
by Dan Walter
MEDIUM.COM

Like Comment Share

7 Chronological

Ethical U.S. Medical: System Change NOW
Like · Reply · October 8, 2016 at 3:17pm

The People Rising : Global
Like · Reply · October 8, 2016 at 3:17pm

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER ,

Respondent.

DECLARATION OF DEB RAUPERS

Civil Action No.:
3:17-MC-00004
(TJM)(ATB)

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

I, Deb Raupers, declare, upon personal knowledge and under penalty of perjury that the following is true and correct:

1. I am employed as Vice President of Patient Care Services at Cayuga Medical Center ("CMC"). I have held this position since October 2015.

2. In this role, I am responsible for investigating patient complaints; ensuring the safety of patients; maintaining compliance with established CMC procedures, state, and federal regulations, evaluating employee performance, and I am responsible for maintaining high levels of patient care.

3. I oversaw the investigation into a patient's complaint that two nurses, Anne Marshall and Loran Lamb, failed to follow CMC's blood transfusion policy.

4. The investigation found that Ms. Marshall and Ms. Lamb (1) knowingly and deliberately violated policy and committed a fundamental breach of patient safety that placed the patient in danger of a potential lethal outcome; (2) caused the vulnerable patient fear and distress

because she was aware of the nurses' disregard of the necessary safety precautions; and (3) falsified the Blood Transfusion Card by certifying that the bedside verification had been performed. In addition, Ms. Marshall disregarded the patient's own concern about following the proper protocol, and Ms. Lamb failed to even enter the patient's room despite certifying that she had.

5. Under these circumstances, CMC (and myself) would have been reckless in not terminating these employees. Therefore, we made the decision to terminate Ms. Marshall and Ms. Lamb.

6. CMC also determined that the knowing falsification of medical records and deliberate violation of established safety standards constituted professional misconduct as defined by the New York State Education Department's ("NYSED") Office of the Professions. Consistent with CMC practices, I filed an incident report with the NYSED's Office of the Professions regarding both nurses.

7. I filed this report on October 20, 2016.

8. Complaints of professional misconduct are independently investigated by the respective Regional Office of Professional Discipline.

9. In cases where the Regional Office finds "sufficient evidence" that misconduct has occurred, the case is referred to the Prosecutions Division of the Office of Professional Discipline. A copy of the Frequently Asked Questions published by the New York State Education Department explaining the complaint procedure is attached as **Exhibit A**.

10. On February, 17, 2017, we received notice that the Regional Office completed its investigation of Ms. Marshall and Ms. Lamb. The Regional Office, finding sufficient evidence

of professional misconduct, referred both cases to the Prosecutions Division for further action. A copy of each determination is attached as **Exhibit B**.

11. Accordingly, Ms. Marshall and Ms. Lamb's licenses to practice nursing may be at risk due to the ongoing NYSED prosecution.

12. I had no knowledge regarding Ms. Lamb's alleged pro-union feelings or sentiments.

Dated: March 2, 2017

Deb Raupers

Sworn to before me this
2nd ~~th~~ day of March, 2017.

NOTARY PUBLIC

ROBIN L TILTON
Notary Public, State of New York
No. 01TI6160254
Qualified in Tompkins County
Commission Expires February 05, 2019

98749.1

Office of the Professions

Frequently Asked Questions

Researching a Licensed Professional | Filing a Complaint | Following Up on a Complaint | Disciplinary Actions

Researching a Licensed Professional

1. **How can I find out if an individual is licensed?**

   You may verify a license through our online license verification service. If you need to contact OP directly about the status of a license, e-mail our customer service representatives at op4info@nysed.gov, call 518-474-3817, fax 518-474-1449, or contact the specific State board for the profession.

2. **How can I learn more about services offered by licensed professionals within a profession?**

   Please the list of licensed professions for more information about the services offered by licensed professionals.

3. **How can I find out if there have been any disciplinary actions against a licensee?**

   You may search our site by name or by month of action for summaries of Regents disciplinary actions taken since 1994. Complaints are accusations of professional misconduct; those that do not result in disciplinary action are confidential. Disciplinary records for physicians, physician assistants, and specialist assistants are available from the Department of Health's Office of Professional Medical Conduct at http://www.health.state.ny.us/nysdoh/opmc/main.htm.

   If an action has been taken against a licensee for professional misconduct, you may contact OP's Public Information Unit by e-mail at dplsdsu@nysed.gov or call 518-474-3817 ext. 330 for a copy of the official disciplinary record.

4. **What does it mean when a professional is in "good standing"?**

   "Good standing" means that the licensee is permitted to practice. Licensees who have been the subject of disciplinary action are considered to be in "good standing" unless they have had their license revoked or suspended.

5. **Can I find out if a licensee has been sued for malpractice?**

   Malpractice suits are different from complaints about professional misconduct. Malpractice is handled by the insurance and court systems; for information about malpractice actions, you may wish to contact your County Clerk's office or local court system.

Filing a Complaint

1. **How do I file a complaint?**

   You will need to complete a complaint form (29 KB). Send your completed complaint form directly to the regional office nearest you or fax it to our main professional discipline office at 212-951-6537.

   If you would like to speak with someone first about professional misconduct or unlicensed practice, you may call our complaint hotline at 1-800-442-8106, contact our nearest regional office, or e-mail conduct@nysed.gov for more information.

2. **If I want to file a complaint, do I have to be sure the professional is guilty?**

   No. If you think you may have been the victim of professional misconduct, file a complaint form (29 KB). The Office of the Professions will look into the complaint and determine if misconduct has occurred.

3. **Can you order a licensed professional to give me my money back?**

   OP does not have the authority to get involved in fee disputes; except for programs such as Worker's Compensation and Medicaid, where fees are set by law, licensees can charge whatever they believe appropriate. We can assist you, however, if you believe that you were charged for work that was not done or which was done poorly.

Following Up on a Complaint

1. **What happens after I file a complaint?**

   Staff in the appropriate regional office follow up on each complaint. Members of the State Board for the profession may be consulted during the investigation. If substantial evidence of misconduct is found, we will pursue disciplinary action. Cases of illegal (unlicensed) practice may be handled administratively, or they may be referred after investigation to the State Attorney General for criminal prosecution.

2. **Can I get information about a complaint when it is under investigation?**

   You may contact the investigator assigned to your complaint at any time during the investigation to learn about the status of your complaint. You will also be informed if the complaint has been referred for further action.

3. **How long does an investigation take? When will I hear about the outcome?**

   Almost all investigations are completed within 9 months or less. The time needed to prosecute cases varies, although many cases are concluded through negotiated settlements. Complicated cases may take 2 years or more (from initial complaint to final action) to resolve. If you file a professional misconduct complaint, you will be informed of the status of your complaint and the final outcome.

Disciplinary Actions

1. **What happens when a licensed professional is the subject of disciplinary action?**

   Minor forms of misconduct may be handled through advisory letters or administrative warnings issued by the Office of the Professions; these administrative actions are confidential. The penalties for more serious misconduct range from a fine to the revocation of the license to practice, in accordance with the nature of the misconduct and its consequences. The Board of Regents, which oversees the State Education Department and its Office of the Professions, reviews and takes final action on the most serious professional discipline cases.

   If the disciplined professional's license to practice has not been revoked or suspended, the Office of the Professions may monitor the professional to ensure that probationary terms--such as periodic employer reports or retraining courses--are met.

2. **If a license is revoked or suspended, is it permanent?**

   With limited exceptions, individuals who have surrendered their licenses or had their licenses revoked must wait at least three years to apply for license restoration. While the Board of Regents has the authority to restore a professional license, such restoration is not a right. The former licensee must prove that he or she is worthy of the privilege of having a professional license.

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / SYRACUSE, NY

Office of Professional Discipline 333 East Washington Street Suite 211 Syracuse, NY 13202
Tel. (315) 428-3288
Fax (315) 428-3287

February 17, 2017

Cayuga Medical Center
Attn: Debra Raupers
101 Dates Dr.
Ithaca, NY 14850
Delivered via email: DRaupers@CAYUGAMED.org

Re: Anne Marshall
Case No. 3605615
Profession: Nursing

Dear Ms. Raupers:

The investigation of your complaint is complete. The case has been referred to the Prosecutions Division of the Office of Professional Discipline for further action. The assigned prosecutor will contact you as necessary and you may be informed of the outcome of the case.

Thank you for bringing this matter to our attention

Very truly yours,

Thomas J. Hayduk

Thomas J. Hayduk
Senior Investigator

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / SYRACUSE, NY

Office of Professional Discipline 333 East Washington Street Suite 211 Syracuse, NY 13202
Tel. (315) 428-3286
Fax (315) 428-3287

February 17, 2017

Cayuga Medical Center
Attn: Debra Raupers
101 Dates Dr.
Ithaca, NY 14850
Delivered via email: DRaupers@CAYUGAMED.org

Re: Loran Lamb
Case No. 3605613
Profession: Nursing

Dear Ms. Raupers:

The investigation of your complaint is complete. The case has been referred to the Prosecutions Division of the Office of Professional Discipline for further action. The assigned prosecutor will contact you as necessary and you may be informed of the outcome of the case.

Thank you for bringing this matter to our attention

Very truly yours,

Thomas J. Hayduk
Senior Investigator

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER ,

Respondent.

DECLARATION OF DANIEL SUDILOVSKY

Civil Action No.: 3:17-MC-00004 (TJM)(ATB)

STATE OF NEW YORK)
) ss.:
COUNTY OF TOMPKINS)

I, Dr. Daniel Sudilovsky, declare, upon personal knowledge and under penalty of perjury that the following is true and correct:

1. I am the Chairman of Pathology and Laboratory Medicine, and Medical Director of Laboratories for Cayuga Medical Center ("CMC"). I also serve as the Blood Bank Director for CMC.

2. All units of blood and other blood products for patient infusion are prepared and handled by CMC's Laboratory Department, which I oversee in my capacity as Medical Director for Laboratories. Those units of blood are administered under my license. In addition, under the New York State Department of Health, the Joint Commission (an independent non-profit organization that certifies nearly 21,000 health care organizations in the United States), the Clinical Laboratory Improvement Amendments, and Food and Drug Administration and College of American Pathologists accreditation regulations, I am personally responsible for every person and process that affects any blood product anywhere in CMC and have absolute authority over

the blood transfusion process. It is my duty to ensure safe handling and administration of blood products to ensure patient safety and maintain my own as well as CMC's accreditation.

3. On September 22, 2016, Deb Raupers, Vice President of Patient Services, informed me of an incident involving two nurses who failed to follow established CMC protocol in administering a blood product transfusion. Blood product administration is a high risk procedure that could result in the patient's death if the wrong blood product is erroneously administered.

4. The incident involved two nurses failing to perform the required two-nurse bedside verification process before performing the blood transfusion process. This is a final critical safeguard before hanging the blood product and starting the transfusion. A complaint was made by a patient who recognized the nurses were not following the protocol that the other nurses who performed her previous transfusions had used. This complaint resulted in a subsequent investigation.

5. After receiving facts relating to the investigation, and after much consideration, on September 26, 2016, I drafted an email to Ms. Raupers concluding that "these two individuals should not be in positions in which their duties or functions as nurses could again jeopardize patient safety in our system." A copy of this email is attached as **Exhibit A**.

6. Ms. Raupers never identified the individuals who were involved in the incident by name, and I had no knowledge of who the individuals were during the course of my review of the incident. I evaluated this incident solely on the basis of the violation of procedure and the grave threat posed by the reckless and purposeful failure to follow necessary protocol.

7. As set forth in my email evaluating the situation:

> I can only conclude from these facts that the nurses in this case acted in a wantonly and willfully reckless manner by sidestepping the fail safes of

> our standard operating procedures and endangered this patient's life in doing so. Not following protocol to positively identify the patient prior to transfusion by using stickers on a clipboard at the nursing station rather than the patients arm band at the bedside to identify the patient represents a clear near miss/or potential serious harm scenario. As experienced nurses, represents a particularly egregious infraction and I have little reason to believe that this would not be repeated at some point in the future or that this form of disregard for protocols will not be passed on to less experienced staff, if they are in positions to do so.

8. Based on the two nurses' failure to comply with CMC policy and the continued risk they would pose if reinstated, it would be reckless, and it would put my license at risk to allow these nurses to perform blood transfusions under my license. In an environment where failure to follow protocols can lead to instant death, I will not put my license, CMC, and most important, CMC patients, at risk by allowing these nurses to perform transfusions.

Dated: March 1, 2017

Dr. Daniel Sudilovsky

Sworn to before me this
1 th day of March, 2017.

NOTARY PUBLIC

BETSEY CONNER
Notary Public, State of New York
Appointed in Cayuga Co.
Official #01CO5072278
Commission expires 11/27/2019

Forrest, Brian

Subject: FW: transfusion related event (130804)

From: Sudilovsky, Daniel
Sent: Monday, September 26, 2016 3:21 PM
To: Raupers, Deb
Subject: transfusion related event (130804)

Deb,

I wanted to thank you for the detailed debriefing of your investigation findings on 9/22 of the above referenced incident which occurred on 9/11/16 and filed by Pt. [redacted]

As we discussed, the lab and nursing leadership have worked diligently to establish standard operating procedures relating to the transfusion of blood products. We agree that errors in the transfusion of blood products (on the lab or nursing side) are exceedingly dangerous and can lead to rapidly catastrophic/lethal outcomes. The current standard lab and nursing procedures (most recently updated 7/16) are based on best practices and, when followed to the letter, are designed to optimally ensure patient safety. It is also clear to me that the CCU nursing leadership has well developed educational programs in place and that both nurses involved in this patient complaint have been thoroughly educated and have signed off on these procedures. I understand both individuals involved are experienced nurses as well.

After much consideration, I can only conclude from these facts that the nurses in this case acted in a wantonly and willfully reckless manner by sidestepping the fail safes of our standard operating procedures and endangered this patients life in doing so. Not following protocol to positively identify the patient prior to transfusion by using stickers on a clipboard at the nursing station rather than the patients arm band at the bedside to identify the patient represents a clear near miss/or potential serious harm scenario. As experienced nurses, this represents a particularly egregious infraction and I have little reason to believe that this would not be repeated at some point in the future or that this form of disregard for protocols will not be passed on to less experienced staff, if they are in positions to do so.

As Laboratory Director for CHS, I feel in the strongest of terms that these two individuals should not be in positions in which their duties or functions as nurses could again jeopardize patient safety in our system.

DS

Daniel Sudilovsky MD, FCAP
Chairman of Pathology and Laboratory Medicine
Medical Director of Laboratories
Cayuga Health System
Tel (607)274-4474
Fax (607)274-4481

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

---------- X

PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

Case No.: 3:17-MC-0004

-Against-

CAYUGA MEDICAL CENTER

---------- X

MEMORANDUM OF LAW IN OPPOSITION TO PETITION FOR TEMPORARY INJUNCTION UNDER SECTION 10(J) OF THE NATIONAL LABOR RELATIONS ACT

BOND, SCHOENECK & KING, PLLC
Attorneys for CAYUGA MEDICAL CENTER
600 Third Avenue, 22nd Floor
New York, New York 10016-1915
Telephone: 646-253-2300

Of Counsel:
Raymond J. Pascucci
Tyler T. Hendry

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PRELIMINARY STATEMENT

This Memorandum of Law is submitted on behalf of Respondent, Cayuga Medical Center ("Respondent" or "CMC") in response to Region Three of the National Labor Relation Board's ("Region Three" or "Petitioner") Petition for Injunctive Relief Under Section 10(j) of the National Labor Relations Act ("NLRA" or "Act"), As Amended ("Injunction Petition")

Region Three's Injunction Petition seeks the interim reinstatement of two Intensive Care Unit ("ICU") nurses, Anne Marshall and Loran Lamb. As set forth in detail below, the two nurses knowingly and deliberately ignored the final critical step in CMC's blood transfusion process (performing a two-person bedside verification inside the room) and falsified records to cover up this violation. Indeed, Ms. Lamb indicated she had performed the final bedside check despite admittedly never setting foot in the patient's room. In addition, when the nervous transfusion patient asked Ms. Marshall why the transfusion process was being performed differently than all other transfusions she had received at CMC, Ms. Marshall lied and stated, in sum and substance, "that's not how we do it here." Ms. Marshall further unnerved the patient by telling her that the previous CMC nurses must have been inexperienced. After receiving the patient's complaint, CMC conducted a thorough multi-layered investigation that resulted in Ms. Marshall and Ms. Lamb's termination.

The New York State Education Department ("NYSED"), Office of the Professions, the entity responsible for the licensing and discipline of nurses in New York, performed their own independent investigation of the incident. On February 17, 2017, the Regional Office of the NYSED completed its investigation, finding "sufficient evidence" of professional misconduct to warrant prosecution. This prosecution may result in the suspension or revocation of Ms. Marshall's and Ms. Lamb's licenses.

By requesting immediate reinstatement, Region Three's petition is asking CMC and this Court to ignore the following:

(1) Ms. Marshall and Ms. Lamb knowingly and deliberately violated the most fundamental and critical step in CMC's blood transfusion process;

(2) Ms. Marshall and Ms. Lamb falsified medical records to cover up this violation;

(3) Ms. Lamb certified she had performed a final check despite the fact that she had never entered the patient's room;

(4) Ms. Marshall lied to the concerned patient about CMC's policy and caused further concern by telling the patient her other nurses must have been inexperienced;

(5) Ms. Marshall insisted she doesn't need to follow CMC blood transfusion policy because she has the ability to multitask;

(6) The NYSED investigation found sufficient evidence of professional misconduct;

(7) Dr. Sudilovsky, the CMC Laboratory Director under whose license all blood transfusions must be administered, would refuse to allow these nurses to perform transfusions under his license; and

(8) Reinstatement would undermine CMC's ability to enforce other necessary and potentially life-saving policies.

By asking this Court to reinstate these two employees, Region Three ignores the real potential harm to CMC patients. Region Three asserts the nurses must be reinstated because (1) there is no longer a union organizer at CMC and (2) employees may be intimidated from showing support for the Union. Putting aside the misguided notion that places collective bargaining rights over the risk to human life, the evidence does not support Region Three's claims that organizing activity has been negatively impacted by the nurses' terminations.

Under these circumstances, Region Three has not met its burden under the applicable tests, particularly because reinstatement could endanger the health and safety of the public. Accordingly, Region Three's request for injunctive relief should be denied.

STATEMENT OF FACTS

Both Anne Marshall and Loran Lamb were suspended pending investigation into a patient complaint and subsequently given the opportunity to resign in lieu of discharge for admittedly and deliberately committing patient safety violations and falsifying medical records.

A. The Blood Product Administration Policy

Blood transfusions are a high-risk critical procedure that could have a lethal outcome if an error results in transfusion of the wrong blood type. (Declaration of Karen Ames ("Ames Decl."), at ¶ 10); Declaration of Dr. Daniel Sudilovsky ("Sudilovsky Decl."), at ¶ 3). Accordingly, CMC maintains a Blood Product Administration Policy to ensure that transfusion patients receive the proper blood. (Ames Decl., at ¶ 10, Ex. F). As relevant to the facts of this case, the Blood Product Administration Policy states:

Transfusion of Packed Cells or Whole Blood

***

12. A two-tier verification should be implemented on inpatient floors:
    A. Before taking blood into the patient room, the two nurses must verify the blood against the order and chart for correct patient name, blood type, type of blood product. No product should enter the patient room until it is verified.
    B. Inside the room, verification must occur matching the blood to the patient with two identifiers (name, date of birth [DOB]); verbally and against the patient wrist band.
    C. The blood must not be hung before the verification has occurred. If the nurse is interrupted for something more pressing, the incoming nurse will need to re-verify that the product is correct before transfusing.

13. Perform the 2-RN bedside checklist:
    A. Verify the provider's order.
    B. Verify that the consent has been signed by the patient (or appropriate representative).
    C. Check the blood bag number, expiration date, blood type and Rh.
    D. Two RNs must identify the patient at the bedside by asking the patient his name or her name and date of birth. This is compared to the patient's armband and blood Transfusion Card.
    E. Transfusion card will be completed in its entirety by two RNs/GNs and upon completion returned immediately to the lab.

(Ames Decl., Ex. F).

Accordingly, two separate verifications by two nurses must occur before the transfusion can begin. (Ames Decl., at ¶ 11). The first verification occurs before the blood can be brought into the room. (*Id.*). During this verification, the two nurses must examine the patient information as well as the information on the blood bag from the laboratory. (*Id.*). Both nurses must verify that everything matches, at which point the blood can be brought into the patient's room. (*Id.*). This outside-the-room verification requirement was added to the Blood Product Administration Policy in 2013 after a near-miss incident in October 2012 when a patient almost received the wrong blood. (*Id.*).

The second verification occurs once the blood is in the patient's room. (Ames Decl., at ¶ 12). Again, the two nurses must verify the patient's name and date of birth (which requires the nurses to check the patient's identification bracelet), and compare that information against the order and label on the bag. (*Id.*). At that point, the blood bag can be hung and the infusion commenced. (*Id.*).

This second verification has at all times been a part of CMC's Blood Product Administration Policy and is a national standard of care. (Ames Decl., at ¶ 12-14, Ex. G).

Indeed, this final two-person bedside verification process is absolutely fundamental as a final safeguard against a potentially fatal error prior to starting a blood transfusion. (Ames Decl., at ¶ 13; Sudilovsky Decl., at ¶ 4). In fact, it is the final bedside verification that saved the patient in October 2012 from receiving the wrong blood. (Ames Decl., at ¶ 14). It is the last line of defense before a patient receives blood and is imperative in ensuring patient safety. (*Id.*; Sudilovsky Decl., at ¶ 4).

Once a transfusion is complete, both nurses involved in the verification process are required to complete a Blood Transfusion Card in the medical record certifying that every step of the verification process was followed and that the transfusion was administered in accordance with all of the necessary safeguards. (Ames Decl., at ¶ 15). It is expected that the nursing staff accurately completes the Blood Transfusion Card, and falsification of that medical record, as with any other medical record, is grounds for discipline, including, termination. *(Id.).*

B. Incident on September 11, 2016 and the Subsequent Investigation

On September 11, 2016, Ms. Lamb and Ms. Marshall were assigned to perform a blood transfusion for a particular patient. (Ames Decl., at ¶ 4). This patient had regularly received blood transfusions prior to this date and was therefore familiar with the verification process. (Ames Decl., at ¶ 3). The patient made a complaint to Charge Nurse, RN Scott Goldsmith stating that the two nurses who performed the transfusion failed to properly verify both her ID and the blood to be used in the transfusion before starting the blood transfusion process. (Ames Decl., at ¶ 3, Ex. A). In fact, only one nurse was in the room at that time. (Ames Decl., at ¶ 3). Thereafter, Mr. Goldsmith entered the complaint into the incident reporting system. (Ames Decl., at ¶ 3). Following the receipt of the incident report completed by Mr. Goldsmith, Karen

Ames, Chief Patient Safety Officer & Director of Quality and Patient Safety, commenced an investigation into the September 11 incident. (Ames Decl., at ¶¶ 1,5).

On September 16, Ms. Ames and Deb Raupers, Director of Patient Services, interviewed the patient. During this interview, the patient indicated that: "in all other instances of hanging blood two nurses always came to bedside to conduct verification and patient ID. She noticed that this time only one nurse [Ms. Marshall] hung the blood carrying out these steps or checking her name band and wondered why [there was a] difference." (Ames Decl., Ex. B; see also, Exs. C & D). The patient also told Ms. Ames and Ms. Raupers that she questioned the nurse at the time about the verification procedure and the nurse indicated that "she (and the other nurse) checked everything at the nurse station." (Ames Decl., Ex. B at p. 3; see also, Exs. C & D). In addition to the information provided during the September 16 interview, on September 19 the patient submitted a written statement to Ms. Ames about the incident, which indicated that: "All previous nurses had made me aware of this protocol and led me through it – this nurse did none . . . I need the hospital to be aware of this breech [sic] of protocol and seriousness I felt being vulnerable in my bed." (Ames Decl., ¶ 7; see also Ex. D).

Ms. Raupers and Ms. Ames then interviewed the patient's sister, a critical care RN in Maine, who witnessed the September 11 incident. (Ames Decl., at ¶ 8). The patient's sister reported that when asked "where is the 2nd nurse for the blood transfusion, [Ms. Marshall's] reply [was] 'We don't have to do that;' [and when] questioned why another nurse did, [Marshall's] reply [was] 'That must have been a new nurse.'" *(Id.)*. The patient's sister also stated that, "As an experienced critical care RN, I was shocked by the responses." *(Id.)*.

Ms. Ames reviewed the Blood Transfusion Card for the patient's September 11 transfusion. It had been completed by both Ms. Lamb and Ms. Marshall. (Ames Decl., at ¶ 8).

In the box with the heading "Below information must be verified at Patient Bedside" both nurses provided their initials and signed the card certifying that the correct procedures had been followed, even though according to the patient's and family member's report, this was not the case. (*Id.*; see also, Ex. E).

Ms. Lamb was interviewed on September 21. (Ames Decl., at ¶ 16). During that interview, she admitted she never even entered the patient's room for this transfusion. She said she made a mistake and said she was sorry. *(Id.).* Ms. Lamb went on to acknowledge that: (1) she understood the Blood Products Administration Policy; (2) she recently completed and understood the blood product training; and (3) that she knew that blood administration is a high-risk process and that an error could be fatal for the patient. *(Id.).* When asked about any contributing factors, Ms. Lamb said that the unit was busy at the time, but that this was no excuse for not completing the two-person check at the bedside. *(Id.).*

Given the information received from Ms. Lamb that the unit was busy at the time of the admitted policy breach, Ms. Ames reviewed the staffing records. (Ames Decl., at ¶ 19). Her review of those records showed that: (1) each ICU nurse had two patients, which is the normal ratio; (2) the charge nurse had no patient assignment and was readily available to assist as needed; and (3) there was an RN designated as on-call who could have been (but was not) called in. *(Id.).* Additionally, Ms. Ames followed-up with Mr. Goldsmith, the Charge Nurse on duty that day, and he confirmed staffing was at the normal ratio and there were no emergencies. ((Ames Decl., at ¶ 20); see also Ex. I).

Ms. Ames spoke with Ms. Marshall about the September 11 incident on October 4, following her return from a pre-scheduled vacation. (Ames Decl., at ¶ 21). Ms. Marshall admitted that she knew the policy but chose not to follow it because she was busy at the time.

(Id.). Seemingly unremorseful and unapologetic about her error, she argued that the verification policy is flawed. *(Id.).* Ms. Marshall diminished the importance of the verification process to patient safety by asserting that she is fully capable of doing the final verification outside the patient's room while multi-tasking. *(Id.).* This was particularly reckless since CMC policy declares blood product administration to be a "safety zone process", meaning that all steps must be performed from start to finish without interruption, and if an interruption does occur the process must be restarted at the beginning and carried through to completion without interruption. *(Id.).*

Based on the information learned during the investigation, CMC concluded that Ms. Marshall and Ms. Lamb: (1) knowingly and deliberately violated policy and committed a fundamental breach of patient safety that placed the patient in danger of a potential lethal outcome; (2) caused the vulnerable patient fear and distress because she was aware of the nurses' disregard of the necessary safety precautions; and (3) falsified the Blood Transfusion Card by certifying that the bedside verification had been performed. (Ames Decl., at ¶ 24; Raupers Decl., at ¶ 4). In addition, Ms. Marshall disregarded the patient's own concern about following the proper protocol, and Ms. Lamb failed to even enter the patient's room despite certifying that she had. (Ames Decl., at ¶ 24; Declaration of Deb Raupers ("Raupers Decl."), at ¶ 4).

C. The Decision to Terminate Loran Lamb and Anne Marshall

As standard course, the September 11 incident was submitted to CMC's Nursing Peer Review Committee, which is comprised of 6-12 RNs from across different care areas at CMC. (Ames Decl., at ¶ 17). As standard practice, after reviewing all relevant information concerning the incident, each committee member rendered one of four possible judgments:

1 – Most experienced, competent practitioners would have managed the case in a similar manner

2 – Most experienced, competent practitioners might have managed the case differently

3 – Most experienced, competent practitioners would have managed the case differently

0 – Reviewer uncertain, needs committee discussion

(Ames Decl., at ¶ 17). The Committee unanimously concluded that, "3 – Most experienced, competent practitioners would have managed the case differently." (Ames Decl., at ¶ 17; Ex. H).

On or about September 22, information concerning the September 11 incident was also provided to Dr. Daniel Sudilovsky, Chairman of Pathology and Laboratory Medicine. (Ames Decl., at ¶ 18; Sudilovsky Decl., at ¶ 3). In his capacity as Medical Director for Laboratories, all units of blood and other blood products for patient infusion are prepared, handled and administered under Dr. Sudilovsky's license. (Ames Decl., at ¶ 18; Sudilovsky Decl., at ¶ 2). Accordingly, Dr. Sudilovsky is personally responsible for every person and process that affects any blood product anywhere in CMC and has absolute authority over the blood transfusion process. (Sudilovsky Decl., at ¶ 2). It is his duty to ensure safe handling and administration of blood products to ensure patient safety and maintain CMC's, as well as his own accreditation. *(Id.)*.

Dr. Sudilovsky was advised about the incident involving the two nurses who failed to follow established CMC protocol in administering a blood product transfusion. (Sudilovsky Decl., at ¶ 3). More specifically, he learned that the two nurses failed to perform the required two-nurse bedside verification process before performing the blood transfusion process. (Sudilovsky Decl., at ¶ 4). Based on the facts collected during the course of the investigation, on

September 26, Dr. Sudilovsky sent an email to Ms. Raupers in which he concluded that "these two individuals should not be in positions in which their duties or functions as nurses could again jeopardize patient safety in our system." (Ames Decl., at ¶ 18; Sudilovsky Decl., at ¶ 5 & Ex. A). He went on to state:

> I can only conclude from these facts that the nurses in this case acted in a wantonly and willfully reckless manner by sidestepping the fail safes of our standard operating procedures and endangered this patient's life in doing so. Not following protocol to positively identify the patient prior to transfusion by using stickers on a clipboard at the nursing station rather than the patients arm band at the bedside to identify the patient represents a clear near miss/or potential serious harm scenario. As experienced nurses, represents a particularly egregious infraction and I have little reason to believe that this would not be repeated at some point in the future or that this form of disregard for protocols will not be passed on to less experienced staff, if they are in positions to do so.

(Sudilovsky Decl., at ¶ 7 & Ex. A).

At no point did Ms. Ames or Ms. Raupers identify the two nurses involved in the September 11 incident, nor did Dr. Sudilovsky have any independent knowledge of the nurses involved in the September 11 incident. (Sudilovsky Decl., at ¶ 6). His evaluation of the situation was based solely on the facts and circumstances of the violation of procedure, and the grave threat posed by the reckless and purposeful failure of the nurses to follow necessary protocol. (Sudilovsky Decl., at ¶ 6).

Based on the investigation and the conclusions reached by both the Nursing Peer Review Committee and Dr. Sudilovsky, the decision was made to terminate Ms. Marshall and Ms. Lamb's employment, as the nurses' actions were reckless and posed a substantial and unjustifiable risk to the patient. (Ames Decl., at ¶ 25; Raupers Decl., at ¶ 5). Indeed, it would have been reckless of CMC to allow Ms. Marshall and Ms. Lamb to return to work. (Raupers Decl., at ¶ 5; Sudilovsky Decl., at ¶ 8).

D. The New York State Education Department's Office of the Professions Investigation

Because Ms. Marshall and Ms. Lamb's misconduct involved a knowing falsification of medical records and deliberate violation of established safety standards, CMC determined that this constituted "professional misconduct" as defined by the New York State Education Department's ("NYSED") Office of the Professions. (Raupers Decl., at ¶ 6). Consistent with CMC practices, on October 20, 2016, Ms. Raupers filed an incident report with the NYSED Office of the Professions regarding both nurses. (Raupers Decl., at ¶¶ 6-7). Such complaints of professional misconduct are independently investigated by the respective Regional Office of Professional Discipline. (Raupers Decl., at ¶ 8). In cases where the Regional Office finds "sufficient evidence" that misconduct has occurred, the case is referred to the Prosecutions Division of the Office of Professional Discipline. (Raupers Decl., at ¶ 9, Ex. A).

On February, 17, 2017, CMC received notice that the Regional Office had completed its investigation of Ms. Marshall's and Ms. Lamb's conduct. (Raupers Decl., at ¶ 10). The Regional Office, finding sufficient evidence of professional misconduct, referred both cases to the Prosecutions Division for further action. (Raupers Decl., at ¶ 10, Ex. B). Accordingly, Ms. Marshall and Ms. Lamb's licenses to practice nursing may be at risk due to the ongoing NYSED prosecution. (Raupers Decl., at ¶ 11).

E. Ongoing Union Organizing Activities

1199 SEIU United Healthcare Workers East ("SEIU" or the "Union") began an attempt to organize nurses at CMC in April 2015. (Declaration of Jeffrey Probert ("Probert Decl."), at ¶ 7, Exs. C & D). There are approximately 450 RNs working at CMC. (Declaration of Brian Forrest ("Forrest Decl."), at ¶ 7).

At no time since initial attempts to organize began has a petition for an election to certify SEIU as the employees' exclusive bargaining representative been filed with the NLRB. (Forrest Decl., at ¶ 8). Indeed, the only purported evidence of the number of authorization cards collected is set forth in a publicly available blog article posted on Truthsayers.org. (Probert Decl., at ¶ 5, Ex. C). In that article, entitled "Nurses Leaving Cayuga Medical Center in Mass Exodus," Ms. Marshall makes the claim that 175 CMC nurses had signed cards back in August 2015, but by October 2016, 25% of those nurses had left CMC. (Probert Decl., Ex. C). Additionally, Region Three's affidavits submitted in support of its Injunction Petition indicate that two of the primary union proponents, Erin Bell and Scott Marsland, left CMC in the Spring/early Summer of 2016. (Ex. G, at ¶ 4 & Ex. H, at ¶ 4 of Petition for Injunction under Section 10(j) under the National Labor Relations Act, as amended ("Petition for Injunction"), Dckt. No 1-2). One of these affidavits also indicated that there was "generally not much discussion of the Union in the Short Stay Surgical Unit since the campaign started" and there was no one in that unit who wore pro-union buttons since the campaign began. (Ex. G, at ¶ 3 of Petition for Injunction).

Upon reviewing the public Facebook posts concerning union meetings, it appears that one union meeting was held on or about July 28, 2016. Only one individual responded on the Facebook page that s/he was attending. (Probert Decl., at ¶ 4). According to one affidavit provided by Region Three, there were 20 attendees at a Union meeting after Ms. Marshall and Ms. Lamb were terminated. (Ex. G, at ¶ 6 of Petition for Injunction). It therefore appears that organizing activities may have increased since July 2016.

Further, a review of public Facebook posts from the publicly available group, "Unionize CMC RNs Now" shows that since October 2016 RNs have continued to regularly discuss terms and conditions of employment, including a recent incident where a nurse was terminated for

falsifying documents relating to a triage. (Probert Decl., at ¶ 8, Exs. D & E). In fact, Ms. Marshall regularly contributes to the Facebook discussions and her posts are regularly shared on the page. (Probert Decl., at ¶ 9, Ex. F).

Additionally, since Ms. Marshall's and Ms. Lamb's terminations in October 2016, employees have spoken freely to the local media about the organizing effort at CMC. For example, on or about October 24, 2016, employees, including two RNs, gave interviews to a local news reporter about terms and conditions of employment at CMC and the status of the union organizing campaign. (Probert Decl., at ¶ 6, Ex. C). This October 24 article included a picture of current RN Cheryl Durkee tabling in the CMC cafeteria in support of the union. (*Id.*). Indeed, Ms. Durkee is an active supporter of the union and it is CMC's understanding that she has taken on the role of union organizer. In mid-February 2017, she stated to her manager, Andrea Champion, Director of Emergency Services, that she was not only a union supporter, but a union organizer. (Declaration of Andrea Champion ("Champion Decl."), at ¶ 2).

Ongoing organizing activity is also evidenced by the fact that a number of employees have continued to show their support for the union by wearing union buttons and other paraphernalia in support of the Union. (Champion Decl., at ¶ 3).

F. Distribution Policy Enforcement

CMC has always maintained two separate types of bulletin boards throughout the medical center. Bulletin boards adjacent to the time clocks have always been exclusively reserved for official CMC business, including such items as statutory notices to employees, information about employee benefits, and memoranda from senior leadership on various topics (referred to as "official bulletin boards"). (Forrest Decl., at ¶ 2). Other bulletin boards located in break rooms and a public bulletin board near the cafeteria are open for employee use to post non-work related

material, such as advertisements for dancing lessons, used cars for sale, apartments for rent, etc. (Forrest Decl., at ¶ 3). Ms. Barr did remove one union posting from an official bulletin board adjacent to the time clock in the ICU. (Forrest Decl., at ¶ 4).

CMC does not allow non-work related materials to be posted on this particular bulletin board since it is one of the official bulletin boards reserved exclusively for CMC business. (Forrest Decl., at ¶ 5). CMC allows non-work related materials to be posted on the bulletin boards set aside for employee use, including in the ICU break room, where many union notices have been posted and been allowed to remain. (Forrest Decl., at ¶ 6).

ARGUMENT

The Regional Director has failed to establish that an injunction under Section 10(j) is warranted. There is no merit to the allegation that Ms. Marshall's and Ms. Lamb's terminations violated the Act, and there is no evidence that the Union, the former employees or anyone else will suffer harm absent an injunction.

Injunctive relief under Section 10(j) is an "extraordinary remedy" to be used only where "the remedial purpose of the Act would be frustrated unless immediate action [is] taken." *McLeod v. General Elec. Co.,* 366 F.2d 847, 849 (2d Cir. 1966), *vacated as moot,* 385 U.S. 533 (1967). The "extraordinary" relief available under Section 10(j) is not intended to alter the basic framework of the Act, "which envisaged a system in which the Board would, in the first instance, consider and decide the issues arising under the Act and pending before it, subject to later review by the Courts of Appeals." *Silverman v. 40-41 Reality Assocs., Inc.,* 668 F.2d 678, 680 (2d Cir. 1982); *see also Kaynard v. Mego Corp.,* 633 F.2d 1026, 1034 (2d Cir. 1980).

The Second Circuit has instructed district courts to issue a Section 10(j) injunction only where two factors are present: "First, the court must find reasonable cause to believe that unfair

labor practices have been committed. Second, the court must find that the requested relief is just and proper." *Hoffman v. Inn Credible Caterers, Ltd.,* 247 F.3d 360, 365 (2d Cir. 2001). That test requires that the Board "come forward with evidence sufficient to spell out a likelihood of violation." *Danielson v. Joint Bd. of Coat, Suit and Allied Garment Workers' Union,* 494 F.2d 1230, 1243 (2d Cir. 1974); *Paulsen v. Renaissance Equity Holdings, LLC,* 849 F. Supp. 2d 335, 353 (E.D.N.Y. 2012).

Region Three fails both prongs of this rest. With regard to the first prong, Region Three submits no evidence at this time[1] to support its claim. As to the second prong, Region Three's petition does not meet the "just and proper" test, which requires it establish that an injunction is necessary to prevent irreparable harm. *See Inn Credible Caterers,* 247 F.3d at 368; *see also Ahearn v. House of the Good Samaritan,* 884 F. Supp. 654, 661 (N.D.N.Y. 1995) *citing Kaynard v. Mego Corp.*, 633 F.2d 1026, 1033 (2d. Cir 1980); *Blyer v. Jung Sun Laundry Group Corp.,* No. 10-cv-2975, 2010 WL 4722286, at *7 (E.D.N.Y. Nov. 15, 2010).

A. THE NURSE'S TERMINATIONS DID NOT VIOLATE THE NLRA

As noted, Region Three does not submit any evidence in support of its argument that reasonable cause exists to believe that Respondent violated Section 8(a)(1) and 8(a)(3) of the Act by suspending and terminating Ms. Marshall and Ms. Lamb.

In contrast, CMC submits sufficient evidence to show that Ms. Marshall and Ms. Lamb were terminated for deliberately and knowingly violating a critical policy and admittedly falsifying medical records to cover that violation. Ms. Lamb never set foot in the room despite certifying that she had. Ms. Marshall lied to the nervous patient questioning her about CMCs

[1] Region Three requests that this Court make its determination on reasonable cause after the administrative hearing is complete and the parties have had an opportunity to address the administrative record through briefings. Therefore, Region Three has submitted no evidence on this prong at this time.

policy, and caused that patient further concern by telling her that her previous nurses must have been inexperienced. When Ms. Marshall was questioned about the incident, instead of showing any sort of remorse or acknowledgement that what she did was wrong, insisted that the verification policy was not necessary so she should not have to follow it.

Accordingly, Ms. Lamb and Ms. Marshall were both appropriately terminated for their flagrant misconduct and disregard for patient safety. Indeed, both nurses are currently being prosecuted by the NYSED for professional misconduct in connection with the September 11 incident, undermining Region Three's assertion that such employees were terminated for union activity. CMC regularly terminates employees for falsifying medical records. (See, e.g., Union's Facebook postings regarding nurse terminated for falsifying triage records; Probert Decl., at Exs. E & F; Ames Decl., at ¶ 22).

Contrary to Region Three's suggestion, in considering whether to grant a Section 10(j) injunction, a district court does not serve as a mere rubber stamp for the Regional Director's allegation that an unfair labor practice has occurred. Rather, in considering the Board's allegations against an employer, the Court gives only *"appropriate* deference" to the factual and legal theories of the Board. *Silverman v. Major League Baseball Player Relations Comm., Inc.,* 67 F.3d 1054, 1059 (2d Cir. 1995) (emphasis added); *see also 40-41 Realty Assocs., Inc.,* 668 F.2d at 681 *("some* degree of deference is warranted when the Regional Director seeks an injunction under section[] 10(j)") (emphasis added). However, no deference is appropriate where the Board's "legal or factual theories are fatally flawed." *J.R.L. Food Corp.,* 196 F.3d at 335; *see also Inn Credible Caterers,* 247 F.3d at 365; *Mego Corp.,* 633 F.2d at 1033.

Here, Region Three does not submit any evidence in support of its assertions that reasonable cause exists that an unfair labor practice occurred. Instead, it relies solely on

conclusory statements in its Memorandum of Law that documentary evidence exists to support its assertions that reasonable cause exists to believe an unfair labor practice occurred. Therefore, Region Three provides no basis for this Court to evaluate whether the Board's legal or factual theories are fatally flawed. Under the evidence submitted by CMC, there is clearly no reasonable cause to believe an unfair labor practice has occurred, and CMC contends that the administrative record, once fully developed, will substantiate that these terminations did not violate the Act.

B. INJUNCTIVE RELIEF WOULD NOT BE "JUST AND PROPER" IN THIS CASE

Even if the Board were to establish reasonable cause, which it cannot, Region Three's request for an injunction should be denied because it cannot demonstrate the requested injunction is "just and proper" under the circumstances presented here. The extraordinary remedy sought is only "just and proper" where there has been a showing that it is necessary to preserve the status quo or prevent irreparable harm. *Ahearn* 884 F. Supp. 654 at 661 *citing Kaynard,* at 1033. Thus, to determine whether an injunction is proper, the Court must apply the same general equitable principles that ordinarily apply in determining the propriety of injunctive relief, including irreparable harm, balance of the equities, and the public interest. *See Ahearn*, 884 F. Supp. at 661-63.

Applying these principles, injunctive relief cannot be just and proper in this case because there is no threat of remedial failure, and the balance of equities and the public interest weigh strongly against injunctive relief. Most importantly, the interest in protecting the health, safety, and welfare of CMC patients far outweighs a highly speculative belief that reinstating Ms. Marshall and Ms. Lamb may reinvigorate a Union campaign that appears to have dissipated long before the two nurses were terminated.

As noted above, Region Three essentially argues that CMC, and this Court, must ignore, among other things, a deliberate and knowing violation of the most fundamental and critical safeguard in the blood transfusion process, falsification of medical records, the NYSED finding sufficient evidence of professional misconduct, and the fact that reinstatement will send a message to all other employees that CMC cannot enforce or expect compliance with its most critical policies.

The primary reason Region Three claims these employees must be reinstated is because there is no longer a union organizer at CMC and employees may be intimidated from showing support for the Union. Again putting aside Region Three's attempt to place collective bargaining rights over the risk to human life, the evidence presented does not support Region Three's claimed need for injunctive relief. The evidence shows, for example, that current Emergency Department Nurse Cheryl Durkee is a Union organizer and recently informed her manager of this fact. A newspaper article that post-dates Ms. Marshall's and Ms. Lamb's terminations pictures Ms. Durkee tabling for the Union. In that article, Ms. Durkee also discusses terms and conditions of employment as well as the need for a union. Another nurse, David Kraskow, is quoted in the same article advocating for unionization. Moreover, several nurses, including Ms. Durkee, continue to regularly wear SEIU buttons at CMC. Employees, and former employee Ms. Marshall, also continue to publicly advocate unionization and discuss terms and conditions of employment on the Facebook page, Unionize CMC RNs.

When weighing the potential risks of reinstating two nurses who are now under prosecution for professional misconduct, against the speculative theory that their reinstatement could potentially revitalize a fading union campaign that never obtained popular support, patient safety must prevail.

1. There Will Be No Irreparable Harm if these Employees Are Reinstated

There will be no irreparable harm if these employees are not reinstated. Irreparable harm is shown only where a failure to provide relief will "threaten to render the Board's processes totally ineffective by precluding a meaningful final remedy." *Blyer v. P&W Elec., Inc.,* 141 F. Supp. 2d 326, 328 (E.D.N.Y. 2001), quoting *Kaynard v. Mego Corp.,* 633 F.2d 1026, 1034 (2d Cir. 1980). There is nothing extraordinary about this case that would render the Board's processes "totally ineffective." This is an entirely routine case alleging that employees were discharged in violation of the Act; the appropriate remedy for the alleged violation — reinstatement with backpay — would leave the employees in the exact same position without the requested injunction. *See Warnervision Entm't Inc. v. Empire of Carolina, Inc.,* 101 F.3d 259, 261 (2d Cir. 1996) ("The purpose of a preliminary injunction is not to give the plaintiff the ultimate relief it seeks."). That remedy is certainly not "totally ineffective" and thus does not warrant an injunction. *See P&W Elec., Inc.,* 141 F. Supp. 2d at 328.

Petitioner's argument that reinstatement is appropriate because the nurses may have moved to other jobs by the time the administrative process is complete is without merit. "Section 10(j) should be applied in the public interest and not in vindication of purely private rights." *Paulsen*, 2016 at *41 *citing Seeler v. Trading Port, Inc.*, 517 F.2d 33, 38 (2d Cir. 1975). There is therefore no basis for injunctive relief.

2. The Public Interest Demands Denial Of The Petition

An order reinstating these nurses — without *any* unfair labor practice finding — would undermine CMC's policies and public trust in the services provided by CMC.

The two-nurse bedside verification process is the final and most critical safeguard against potentially fatal error. Not only did the nurses fail to follow procedure, but Ms. Marshall would not even acknowledge the procedure when confronted by the concerned patient. When the

patient asked Ms. Marshall why she was not performing the blood transfusion in the same fashion the numerous previous nurses who had performed transfusions on her, Ms. Marshall disregarded the patient's concern, claiming the other nurses must have been inexperienced. Ms. Marshall later claimed that the policy should not apply to her because she was a good multitasker. Similarly unacceptable, Ms. Lamb acknowledged on the patient's transfusion card that the safety procedures were followed, even though she never set foot in the patient's room during the transfusion.

Simply put, failing to terminate these two employees would have been reckless and endangered the lives of CMC patients. Interim reinstatement of these employees would be the same. Interim reinstatement would senselessly put patients at risk, as the nurses have demonstrated a clear willingness to disregard CMC's established safety protocol. Where a hospital/nursing home employee poses an ongoing risk of patient harm, the court properly found in *Lightner v. 1621 Route 22 W. Operating Co., LLC,* Civ. No. 11-2002, 2012 U.S. Dist LEXIS 52896, *153-55 (D.N.J. Apr. 16, 2012), that "the impact reinstating [the former employee's] employment would have on [the employer] and on its patients far outweighs the incremental public interest served by further safeguarding the collective bargaining process."

In reaching its decision, the court in *Lightner* highlighted the obvious: a nursing home is not a factory, mine, or assembly plant. *Id.* at 147. CMC respectfully submits that the present injunction motion should be evaluated similarly, recognizing that CMC is a place:

> where human ailments are treated, where patients and relatives alike often are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity and where the patient and his family—irrespective of whether that patient and that family are labor or management oriented—need a restful, uncluttered relaxing and helpful atmosphere, rather than one remindful of the tensions of the marketplace in addition to the tensions of the sick bed.

Id. at 147 fn. 36.

In the instant proceeding, Ms. Marshall and Ms. Lamb deliberately and knowingly violated a policy, falsified medical records, and Ms. Marshall directly lied to a nervous patient about CMC policy and caused further concern by telling her that her other nurses must have been inexperienced ones. She also insisted during the investigation that the policy itself isn't necessary so she shouldn't have to follow it. Putting either of these individuals back in a position where they can harm a patient, at the same time they are under prosecution for professional misconduct by the NYSED, would create unnecessary risk to CMC's patients.

Reinstatement would also confirm to all other employees that they can ignore vital checks and procedures that could save a patient's life. This sort of dangerous precedent cannot be supported and would go directly against the public interest.

3. There is No Compelling Necessity to Preserve the Status Quo

There is no need for the Regional Director to have prospective relief against CMC in order to preserve the status quo while the ALJ continues to hear the claims. The Regional Director has suggested that this is a "nip in the bud" case, in which an allegedly unlawful discharge, if not immediately remedied, will frustrate an organizing campaign that is in progress. But this is not such a case.

The Union has sought to organize RNs at CMC dating back to April 2015. The unit sought to be organized is approximately 450 employees. At no time since the organizing drive began has a petition for an election to certify SEIU as the employees' exclusive bargaining representative been filed with the NLRB. Indeed, the only statement regarding the number of authorization cards ever signed is set forth in a publicly available blog article posted on

Truthsayers.org. In this article, Ms. Marshall claims that 175 CMC nurses had signed cards by Autumn 2015. She then claims that by October 2016, 25% of those nurses had left CMC.

Additionally, Region Three's affidavits highlight that two major proponents of the Union, Scott Marsland and Erin Bell, voluntarily left CMC in Spring/Summer of 2016. Thus, there are numerous reasons why Union organizing campaign was dwindling before the termination of Ms. Marshall and Ms. Lamb. From the evidence available via Facebook, attendance at union meetings may have actually increased after the termination of Ms. Marshall and Ms. Lamb.

In sum, SEIU has been attempting unsuccessfully to organize this group of employees since early 2015. They have lost at least 25% of their initial supporters, two primary organizers left CMC in spring/summer 2016, and attendance at Union meetings was poor prior to the terminations. Under these circumstances, collective bargaining rights will not be undermined by denying interim reinstatement. *Paulsen v. CSC Holdings, LLC*, 2016 U.S. Dist. LEXIS 30259, *40-41 (E.D.N.Y. Mar. 8, 2016) (finding failure to reinstate employee will not undermine collective bargaining rights where interest in the Union was low).

Further, despite Region Three's contention that there are no union organizers left and individuals are intimidated to talk about the union in fear of being disciplined, the evidence does not support this claim. Employees have spoken freely to the local media about the organizing effort at CMC and one nurse, Ms. Durkee, indicated to her manager that she is an organizer. Ongoing organizing activity is also evidenced by the fact that a number of employees have continued to show their support of the union by wearing union buttons and other paraphernalia in support of the union. Also, a review of public Facebook posts on Unionizing CMC RNs shows that since October 2016 RNs have continued to regularly and openly discuss terms and

conditions of employment, including a recent incident where a nurse was terminated for falsifying documents relating to a triage.

Ms. Lamb and Ms. Marshall are free to actively support the Union through Facebook, and Ms. Marshall's postings are frequently shared on the Unionizing CMC RNs Facebook page. Significantly, the court in *Paulsen* found that delay will not undermine collective bargaining rights where "Evidence has been presented that [the terminated employee] continues to actively support the Union by emailing her former co-workers. *Id.* at 41.

The evidence shows that interest in the Union was dwindling prior to the termination of Ms. Marshall and Ms. Lamb, and if anything, it suggests that there may now be an increase in attendance at Union meetings. Ms. Durkee has stepped in as union organizer, employees speak freely with the press about the unionization effort, employees continue to wear SEIU or "organize" buttons, and former employees, Ms. Marshall and Ms. Lamb, are free to express their support for unionization over the internet and through the media. Under these circumstances, denying Region Three's request for an injunction will not undermine collective bargaining rights.

4. Region Three's Delay in Seeking the Injunction Shows it is Not Necessary

Finally, Region Three's contention that immediate reinstatement is necessary to avoid remedial failure is belied by its own delay in initiating this proceeding. Section 10(j) is to be reserved for circumstances requiring "immediate" relief. *McLeod v. General Elec. Co.,* 366 F.2d 847, 849 (2d Cir. 1966), *vacated as moot,* 385 U.S. 533 (1967). Region Three's delay demonstrates that this is not such a case.

The Regional Director refrained from initiating this proceeding until more than four months after the employees' terminations and nearly three months after it issued its Complaint. This delay shows that there is no urgency to this case such that would require this Court to

intervene in and interfere with the Board's usual processes. *See Seeler v. H.G. Page & Sons, Inc.,* 540 F. Supp. 77, 79 (S.D.N.Y. 1982) (where Board delayed in seeking injunction for four months, "[the 10(j)] remedy does not apply where the Board itself does not treat the ongoing violations with urgency. . . . [10(j) was] not intend[ed] to countenance undue delay in requesting interim injunctive relief. The Board's inaction in this case is the most compelling evidence against the need for intervention by this court"); *Silverman v. Local 3 IBEW*, 634 F. Supp. 671, 673 (S.D.N.Y. 1986) (delay of three months in seeking 10(j) injunction "seriously, indeed fatally, undermines the Board's position that an injunction is necessary to protect against harm to the public"); *Moore-Duncan v. Traction Wholesale Ctr. Co.,* No. 97-6544, 1997 WL 792909, at *3 (E.D. Pa. Dec. 19, 1997) (petition denied, noting that the six-month delay in seeking the petition "raises some concern as to whether the injunction is necessary").

The procedural posture and facts in *Paulsen* are instructive here. In that case, a charge was filed on June 18, 2015, a complaint issued on August 24, 2015 and the Administrative Law Judge took testimony on various dates between September 28, 2015 and October 30, 2015. The NLRB then filed its petition while additional hearing days were remaining. *Paulsen,* at *38-39. The Board also made the identical argument it makes here that the employer fired the main union proponent, and therefore immediate reinstatement was required. *Id.* at 38-39. In responding to the Board's contention and ultimately denying injunctive relief for this and other reasons, the court stated:

> Given the Petitioner's Argument that "Perry was the face of the Union campaign in Jericho and as a result of her termination, 'everything was shut down,'" one would expect that an application for §10(j) relief would have been made on a more timely basis.

Id. Similarly here, waiting to file the injunction papers until four months later weighs against the argument that immediate relief is necessary. Further, the unfair labor practice charge is currently

being tried, and it is reasonable to expect the trial to be completed soon and a decision issued. There has not been a sufficient showing of irreparable harm to justify a court in interfering at this stage and in effect doing the Board's work for it. *See McLeod v. Art Steel Co., Inc.*, No. 71-cv-2571, 1971 WL 783, at *1 (S.D.N.Y. 1986) (Holding it would be unjustified for a court to interfere and "in effect do the Board's work for it" after a three month delay in seeking an injunction and the alleged violation was tried for over a month).

CONCLUSION

For the foregoing reasons, CMC respectfully requests that the Court deny the petition in its entirety.

Dated: March 3, 2017

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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PAUL MURPHY, Regional Director of Region 3 of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

Case No.: 3:17-MC-0004

-against-

CAYUGA MEDICAL CENTER

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MEMORANDUM OF LAW/ANSWER RESPONDING TO PETITIONER'S MOTIONS TO DETERMINE PETITION FOR TEMPORARY INJUNCTION ON THE BASIS OF THE ADMINISTRATIVE RECORD AND TO SHORTEN TIME AND FOR AN EXPEDITED HEARING

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PRELIMINARY STATEMENT

On or about February 21, 2017[1], Region Three of the National Labor Relations Board ("Region Three" or "Petitioner") filed a Petition for Injunctive Relief Under Section 10(j) of the National Labor Relations Act ("NLRA" or "Act"), seeking (1) to enjoin Respondent Cayuga Medical Center ("Respondent" or "CMC") from alleged unfair labor practices identified in the petition; (2) reinstatement of two employees; and (3) that the Court's order be read to employees pending final administrative disposition of the underlying unfair labor practice complaint ("Injunction Petition").

At the same time, Region Three made two other motions: (1) to determine the petition on the basis of the administrative record in a pending unfair labor practice proceeding supplemented by affidavits ("Administrative Record Motion") and (2) for an expedited hearing ("Expedited Hearing Motion"). This Memorandum of Law/Answer is submitted by CMC in response[2] to these two motions brought by Region Three.

As discussed below, CMC does not dispute that the District Court may decide a 10(j) injunction on the basis of an administrative record and affidavits.[3] Therefore, Respondent only opposes Region Three's motion to the extent it asks this Court to grant the 10(j) petition on the basis of the underlying administrative record before it is fully developed and the parties are given an opportunity to address the administrative record through briefing. Similarly, CMC opposes

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[1] All dates occur in 2017, unless otherwise indicated.
[2] To the extent the Court's February 22 Order requires an answer from Respondent to the two motions, please consider this submission Respondent's answers to Region Three's two motions.
[3] CMC does not oppose that portion of Region Three's motion that seeks to supplement the administrative record with affidavits to address the "just and proper" prong of the test. Region Three has submitted three such affidavits and does not seek to present any additional evidence. As discussed in its Opposition to the Petition for Injunction, Region Three has failed to establish injunctive relief is "just and proper" through this evidence, and therefore, the Petition should be denied.

Region Three's Expedited Hearing Motion to the extent it requests a hearing on any matter other than Region Three's failure to establish that injunctive relief is "just and proper."

PROCEDURAL BACKGROUND

By way of background[4], this case and the underlying administrative proceeding involve the termination of two Registered Nurses ("RNs") who admittedly failed to follow CMC's mandatory procedures for confirming the accuracy of the blood to be used in a blood transfusion. The RNs also falsified medical records in relation to the incident. The failure to follow the proper procedure was reported by a patient who had received over 20 transfusions at CMC, and therefore recognized the nurses' failure to properly check her blood at her bedside.

The failure to verify the blood occurred on September 11, 2016, and both employees were suspended pending further investigation. After a thorough investigation was conducted, both employees were terminated on October 4 and 5, 2016, respectively. The Union filed a charge that these suspensions were discriminatory on September 29, 2016, and a Charge that the terminations were discriminatory on October 12, 2016. The NLRB investigated and issued its complaint on November 29, 2016. (See Petitioner's Memorandum of Points and Authorities in Support of Petition For Injunctive Relief, Docket # 1, Exs. A-D).

An administrative hearing in this matter is ongoing. Testimony was taken on January 9-12 and it resumed this Monday, February 27. It is scheduled to continue for the entire week plus the following week through its completion. Should any additional days be needed, the ALJ has set aside the week of April 3, 2017 to complete the hearing. Thus, the administrative record will be complete in the near-future. (Declaration of Raymond J. Pascucci, at ¶ 2).

[4] The facts of this case are fully set forth full in CMC's Memorandum of Law in Opposition to Petition for Temporary Injunction Under Section 10(j) of the National Labor Relations Act.

ARGUMENT

The NLRB's Administrative Record Motion asks this Court to make a determination on its Injunction Petition on the basis of the underlying administrative record, as supplemented by affidavits. However, none of the administrative record has yet been submitted to the Court and Region Three does not cite to or otherwise rely on that record in its Injunction Petition. Region Three's failure to cite to or otherwise rely on the record in the underlying administrative proceeding may be explained by the fact that the hearing is ongoing and the record is not yet complete and/or that the testimony to date does not support Region Three's factual and/or legal theories. Accordingly, while Respondent does not generally oppose that the Court's determination may be made on the basis of the administrative record and supplemental affidavits, Respondent contends the granting of any injunction must be based on the complete administrative record and that no injunctive relief should be granted until the parties are allowed to address the complete administrative record through briefing.

Significantly, CMC contends that it has set forth sufficient evidence in its Opposition to the Petition for Injunction to show that the Petition should be denied even before the administrative record is developed. That is because the administrative record is necessary to evaluate only whether "reasonable cause" exists to believe an unfair labor practice has occurred, the first prong required for a 10(j) injunction to be issued. However, because Region Three has failed to establish that an injunction would be "just and proper,"[5] the second required prong for a 10(j) injunction to be issued, even if Region Three were to establish reasonable cause to believe an unfair labor practice has occurred, the Petition must be still be denied.

[5] Region Three submits three affidavits in an attempt to establish that an injunction is "just and proper." See Petition for Injunction, Exs. F-H. Region Three does not request that it be allowed to submit any additional affidavits or evidence regarding the "just and proper" prong, and based on its insufficient showing on this required prong, the injunction should be denied.

In support of its Administrative Record Motion, Region Three cites to Kaynard ex rel. NLRB v. Palby Lingerie, Inc., 625 F.2d 1047 (2d Cir. 1980) for the proposition that it is proper for this Court to base its determination "upon the transcript of sworn testimony before an administrative law judge of the Board, subject to cross examination, in the underlying administrative proceedings." See Memorandum of Points and Authorities In Support of Administrative Record and Expedited Hearing Motions, Docket # 2-1, p. 5-6. However, that case also specifically notes that the district court declined to consider the Board's petition until after the underlying administrative hearing was complete. Palby Lingerie, Inc., at 1050-51 (the District judge "postponed consideration of the [Board's 10(j)] petition pending completion of the Board's administrative hearing on the complaint. The parties later stipulated that the transcript of testimony and the exhibits introduced in the administrative hearing would constitute the record in the § 10(j) proceeding"); see also, Dunbar ex rel. NLRB v. Colony Liquor & Wine Distribs., L.L.C., 15 F. Supp. 2d 223, 231, 237, n. 13 (N.D.N.Y. 1998) (contemplates determination on the entirety of the record following the close of an administrative hearing). Accordingly, CMC maintains that Region Three's Administrative Record Motion and Expedited Hearing Motion should be dismissed to the extent they seek an injunction be granted on the administrative record as it currently stands, prior to the close of the administrative hearing before the ALJ.

The NLRB's own submissions seemingly envision the determination of the "reasonable evidence" prong on the basis of a complete administrative record – as its proposed Order provides that this Court set a date for the Board to file the administrative record at some future date, as well as submit a memorandum of law addressing the administrative record. See Proposed Order, Docket # 2-3. Accordingly, CMC seeks to confirm that no injunctive relief can be granted until both sides have the opportunity to address the administrative record and the first

"reasonable cause" prong of the 10(j) injunction test. However, the Petition may currently be denied based on Region Three's failure to establish that injunctive relief is "just and proper" under the second prong.

Similarly, while Respondent does not generally oppose Region Three's Expedited Hearing Motion, it does so only to the extent the Board is seeking an expedited hearing prior to the close of the administrative hearing unless the hearing is related to the Region's failure to establish injunctive relief as "just and proper" and the dismissal of the Petition.

CONCLUSION

For the reasons set forth above, and the significant patient safety concerns raised if a decision is made to reinstate these nurses, no injunctive relief may be granted until the administrative record is complete and both sides have had the opportunity to address the administrative record through briefs. However, the Petition may currently be denied based on Region Three's failure to establish injunctive relief is "just and proper."

Dated: March 3, 2017

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL J. MURPHY, Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

CIVIL Case No. 3:17-MC-00004 (TJM)(ATB)

CAYUGA MEDICAL CENTER AT ITHACA, INC.

Respondent

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR TEMPORARY INJUNCTION UNDER SECTION 10(j) OF NLRA

Jessica Noto, Counsel for Petitioner
Alicia Pender, Counsel for Petitioner
Caroline Wolkoff, On Brief

I. Preliminary Statement

Petitioner submits this Reply to Respondent's Opposition to the Region's Petition for 10(j) Relief to clarify certain misleading characterizations of fact and law. While Respondent seeks to create issues of fact about why it terminated union advocates Anne Marshall and Loran Lamb, the law is clear that a court must defer to the Regional Director's conclusions unless they are fatally flawed. The record offers ample evidence supporting the Regional Director's findings and, in fact, belies Respondent's version of events. The record shows Respondent terminated Marshall and Lamb for their union activity, not because they checked blood for a transfusion at the nurses' station instead of the bedside. It is replete with examples of Respondent choosing to stand by its nurses when they deviated from policy and even made medical errors, with the notable exception of Marshall and Lamb. Respondent thus relies on a false dichotomy of patient safety versus collective bargaining rights. The variable that led to Marshall and Lamb's terminations was not that they presented a greater danger than the nurses Respondent has stood by – the record is clear they did not – but Respondent's animus toward their union activity.

II. Petitioner Seeks 10(j) Interim Relief Based on Available Administrative Record

Petitioner maintains Respondent is a recidivist employer that has committed hallmark unfair labor practices. It has, therefore, asked for 10(j) relief based on the existing administrative record, supplemented by affidavits. Contrary to Respondent's characterization, Petitioner does not ask the Court to wait until after the hearing is complete and the parties have addressed the record through briefs to the ALJ.[1] Rather, it seeks 10(j) relief as soon as practicable.

The existing administrative record provides a robust basis for evaluating the need for 10(j) relief. The General Counsel rested its case in chief on March 10. The hearing is scheduled to reconvene on April 3 and to conclude the following day. The Court need not wait for the

[1] *See* Resp.'s Opp. at n.1; *see also* Resp.'s Mem. of Law/Answer to Petitioner's Mots. at 1.

hearing to close to make a decision, however, let alone for completion of time-consuming briefing thereafter. Such delay would run counter to the purpose of 10(j) to provide expeditious interim relief to preserve the Board's final remedial authority. No requirement exists that, once the record opens, a petitioner must wait for the completion of the administrative proceeding to seek interim remedies.[2] Section 10(j) does not contemplate a full adjudication of the underlying case, but simply an evaluation of whether the petitioner has shown "reasonable cause" that an unfair labor practice occurred. *See Kreisberg v. HealthBridge Mgmt., LLC*, 732 F.3d 131 (2d Cir. 2013*); Hoffman v. Inn Credible Caterers, Ltd.*, 247 F.3d 360 (2d Cir. 2001); *Kaynard v. Mego Corp*., 633 F.2d 1026, 1032-33 (2d Cir. 1980). For that reason, a petitioner may base its request on affidavits prior to a hearing on the merits. *See Red & Tan Lines, Inc.*, No. 98 CIV. 8247, 1999 WL 1140871 (S.D.N.Y. 1999). Here, the Court will have affidavits as well as the record of the General Counsel's case in chief. Certainly, the existing record provides a more fulsome basis than affidavits alone to ascertain whether "reasonable cause" exists.

The fact that Respondent has yet to complete presentation of its case does not mitigate in favor of delay. Courts may not make credibility determinations in assessing the need for 10(j) relief. *Kaynard v. Palby Lingerie, Inc.*, 625 F.2d 1047, 1051-52 n.5 (2d Cir. 1980); *Seeler v. The Trading Port, Inc.*, 517 F.2d 33, 36-37 (2d Cir. 1975) (stating deference to Regional Director's conclusions required if "within the range of rationality"). Moreover, Respondent has had a full opportunity to cross-examine the General Counsel's witnesses, an opportunity it would not have had if the petition were based on affidavits alone. Respondent, therefore, will suffer no prejudice

[2] Respondent's cases do not establish a rule that a court must wait for a complete administrative record. Neither court explains why it decided the 10(j) petition at the stage it did, though it was presumably appropriate given the state of the record in those cases. *See, e.g.*, *Dunbar v. Colony Liquor*, 15 F. Supp. 2d 223, n.13 (N.D.N.Y. 1998) (noting delay was due to petitioner's failure to provide support for petition, necessitating petitioner's request to base decision on complete record). Here, the record provides ample evidence upon which to base a decision.

if the Court bases a decision on the existing record. The Court, however, will have the benefit of a fully developed and cross-examined record of Petitioner's "reasonable cause."

III. The Record Contradicts Respondent's Account and Supports Reasonable Cause

Respondent's Opposition seeks to establish factual dispute at every turn – no matter how greatly its version of events departs from the facts on the record. However, as the record supports the Regional Director's conclusions, the court must defer to that version of events.[3]

Petitioner has submitted significant evidence of reasonable cause that a violation of labor law has occurred. It has submitted an ALJ decision that establishes Respondent's animus toward union activity in general and Anne Marshall in particular.[4] That decision demonstrates that Respondent is a likely recidivist, an employer with a history of numerous labor law violations, including retaliation against one of the instant discriminatees. Petitioner also relies upon and will shortly submit the record of its case in chief in the underlying hearing. That record supports the conclusion that Respondent terminated Marshall and Lamb for their union activity. It establishes that reasonable cause exists to believe Respondent's stated reason for terminating Marshall and Lamb is pretextual. The nurses uniformly testified that it was not the practice in the ICU always to check blood at a patient's bedside. They even informed Respondent of this fact when questioned during Respondent's investigation. Yet Respondent terminated Marshall and Lamb despite standing by nurses committing more egregious errors.

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[3] A district court "need not make a final determination that the conduct in question is an unfair labor practice." *Inn Credible Caterers*, 247 F.3d at 365. "It need only find reasonable cause to support such a conclusion. Appropriate deference must be shown to the judgment of the NLRB and a district court should decline to grant relief only if convinced that the NLRB's legal or factual theories are fatally flawed." *Hoffman v. Polycast Tech.*, 79 F.3d 331 (1996).

[4] Although exceptions to the ALJ's decision are pending, *see* Pascucci Aff. ¶ 9, the Second Circuit has held that an ALJ decision is a "useful benchmark" for evaluating the strength of a Regional Director's theories. *Bloedorn*, 276 F.3d at 288 (citing *Inn Credible Caterers*, 247 F.3d at 367). ALJs evaluate cases based on a higher "preponderance of the evidence" standard.

Moreover, the administrative record contradicts the version of events that Respondent has proffered. For example, the record establishes that Respondent did not conduct a "thorough multilayered investigation." *See* Resp.'s Opp. at 1. The record shows that Respondent relied entirely on the patient's account of events and did not speak to Marshall or Lamb about the incident until after it decided to terminate them. The record also establishes that Respondent ignored the evidence it gathered about the practice for checking blood in the ICU. All four nurses questioned by Respondent stated that they sometimes performed transfusion checks at the nurses' station rather than at the patient's bedside, contrary to the written policy. Several additional nurses testified to this fact at the hearing. In the face of these accounts, little weight should be afforded Respondent's representation that the incident reporting system revealed no reported violations of the bedside check procedure.[5] At best, the absence of such reports shows, simply, that the policy had not previously been enforced. Respondent ignored this possibility in deciding to terminate Marshall and Lamb, even as other nurses represented it to be the case.[6] The Regional Director, however, reasonably concluded based on this evidence and Respondent's history of unfair labor practices, including retaliation against Marshall, that Respondent enforced the policy for the first time as a pretext for ridding itself of a union organizer and supporter.

To make the outcome of the investigation appear unbiased, Respondent states that the decision to terminate Marshall and Lamb was partly based on the recommendation of Dr. Sudilovsky, Chairman of Pathology and Laboratory Medicine. However, record evidence shows that in 2012, Dr. Sudilovsky's sentiments mattered little to Respondent. In 2012, Dr. Sudilovsky

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[5] *See* Respondent's response, Ames Aff. ¶ 22.

[6] Respondent represents that Marshall and Lamb acknowledged they violated policy. The record establishes, however, that Lamb told Ames that nurses did not always follow the policy. The record also shows that Marshall stated she did not remember the policy and believed all ICU nurses sometimes checked blood at the nurses' station. Marshall only acknowledged deviating from policy in response to Respondent's recitation of the policy to her.

expressed displeasure at the "band aid" approach to dealing with an instance in which three nurses deviated from procedure, leading to the wrong blood being hung for a transfusion.[7] In that case, two of the three nurses received no discipline. The only nurse who parted ways with Respondent did so prior to the completion of the investigation into the incident and had previously been counseled for, among a litany of other things, diverting narcotics, falsifying and failing to document patient records, and overdosing a patient on narcotics. Indeed, Karen Ames, who later led the investigation into Marshall and Lamb, said in an email about the 2012 incident, "I do not want them [the nurses] feeling beaten up," adding, "from the info I was given it did not appear this was a breakdown in processes but rather deviation from policy and procedure in place." She further noted, "I promise I will not allow blame etc. We need to move forward." In stark contrast, the record here shows that Ames had no problem attributing blame to Marshall and Lamb when they deviated from policy without causing patient harm.[8]

Such evidence gives the lie to Respondent's claim that 10(j) interim reinstatement would elevate collective bargaining rights over patient safety. The fact is, Respondent has never before elevated patient safety to the degree it has here when a nurse failed to follow policy to no ill-effect. The record abounds with examples of Respondent failing to punish, let alone terminate, nurses for near identical and more egregious deviations. The 2012 incident, described above, is one such example. In addition, the record shows that Respondent did not discipline nurses who committed actual medical errors, including a recent incident in which a nurse failed to notice a transfusion reaction despite a policy to check on a patient after a transfusion and another incident

[7] Ames attests that the bedside check saved the patient in the 2012 incident. Ames Aff. ¶ 14. However, the record demonstrates an error was avoided because the nurse acting as courier for the blood alerted the nurses after the blood was hung, but before the transfusion began.
[8] There is no dispute that, unlike in the 2012 incident, Marshall and Lamb hung the correct blood and had no disciplinary history.

in which a nurse failed to prime blood tubing and pre-medicate a patient prior to a transfusion. In the latter incident, the nurse signed to indicate she had followed procedures for priming the tubing and pre-medicating the patient, yet Respondent never alleged she falsified records. Evidence adduced during the General Counsel's case in chief also shows that Respondent did not discipline nurses who gave the wrong medication to a pre-operative patient nor another nurse who hung – and in fact started delivery of – the wrong infusion fluid for a patient. Both deviated from established policy and procedure in making these medical errors. Despite its lax approach to disciplining nurses who deviate from policy – even in cases resulting in actual medical error – Respondent would have the Court believe that patient safety alone motivated its decision to terminate Marshall and Lamb. The record provides a sound basis to support the Regional Director's conclusion that union activity was the variable distinguishing Respondent's treatment of Marshall and Lamb from its treatment of other nurses it has stood by.[9]

Respondent cites the status of an NYSED report as evidence that it terminated Marshall and Lamb for lawful reasons. Putting aside momentarily that no causal relationship exists between Respondent's motivations and NYSED's decision to refer the report to prosecution, NYSED has made no decision on what penalty, if any, would be suitable. Marshall and Lamb still have their nursing licenses and are eligible to work as nurses. NYSED has not precluded Lamb from remaining employed as a nurse, nor Marshall from seeking employment in her profession.[10] Moreover, NYSED's internal processes are not dispositive of *why* Respondent

[9] Respondent cites one termination as comparable. Ames ¶ 23. Ames attests a nurse was discharged for failing to perform checks before administering medication. The nurse engaged in more egregious conduct. She was in charge of a patient in the adolescent behavioral health ward. The patient's parent had refused consent for a class of drugs. Ignoring this directive, the nurse obtained a drug in that class for the patient under a different patient's name. *See* Ex. 13a.

[10] In the unlikely event they lose their licenses, any order of reinstatement will, of course, be moot.

fired Marshall and Lamb. Other nurses have kept their jobs with Respondent despite having "falsified" records, deviating from policy, and even committing serious medical errors. No evidence exists that Respondent reported any of these incidences. Evidence exists, however, that union supporters Marshall and Lamb were fired when others in similar circumstances were not.

Petitioner has, therefore, sustained its burden of showing reasonable cause that an unfair labor practice occurred. Respondent's effort to create factual dispute fails under the standard of review for issuing 10(j) relief, which does not contemplate a district court resolving factual disputes or making credibility determinations. While a court is, of course, no mere rubber stamp, the Regional Director's conclusion about this recidivist employer's motivation is far from "fatally flawed" given the administrative record.

IV. Respondent Misrepresents the State of the Union Campaign

Despite Respondent's characterization otherwise, the organizing campaign is far from alive and well.[11] Strong evidence of chill exists, rendering interim relief under 10(j) just and proper. As Petitioner's affidavits demonstrate, employees are fearful of openly supporting the Union. For example, registered nurse Cheryl Durkee avers that, despite continued interest, meeting attendance has declined and employees have expressed their fear to her of becoming involved with the Union. *See* Durkee Aff. In her affidavit, Durkee attests to her own fear of being retaliated against. Contrary to Respondent's contention that Durkee has assumed leadership of organization efforts, Durkee asserts that is not the case. She has not set up a table to distribute information since Marshall's termination, nor has she posted a pro-union flyer.[12]

[11] Respondent also argues the campaign is long dead. Resp.'s Opp. 21-23. It is unclear how both characterizations can be true.

[12] Durkee denies being a union organizer, despite Respondent's representation. Also, the picture Respondent provided of Durkee tabling for the Union is not recent, as Respondent represents. It was taken July 9, 2015, prior even to the first unfair labor practice hearing.

Affidavits from other nurses corroborate Durkee's account. They and their peers are afraid to participate in unionization efforts since Marshall and Lamb's firing.

Further, to the extent Respondent alleges union support dwindled prior to Marshall and Lamb's terminations, this case must be viewed in the context of Respondent's prior unfair labor practices. Respondent, as a recidivist employer, should not benefit from earlier conduct that effectively instilled fear in its employees. Indeed, these employees were right to be afraid, as the Regional Director has reasonable cause to believe Respondent went on to commit the hallmark unfair labor practices at issue here. Section 10(j) relief is, therefore, just and proper.

V. The Petition for Injunctive Relief Remains Timely and Necessary

The passage of a few months' time has not nullified the need for interim relief. Only four months have passed since the underlying charge was filed. Courts have affirmed the issuance of interim relief despite far greater delay. *See Overstreet v. El Paso Disposal*, 625 F.3d 844, 856 (5th Cir. 2010) (involving 19-month delay); *Gottfried*, 818 F.2d at 495 (involving eight-month delay); *Muffley v. Spartan Mining*, 570 F.3d 534, 544 (4th Cir. 2009) (involving 18-month delay and noting "[c]omplicated labor disputes like this one require time to investigate and litigate"); *Hirsch v. Dorsey Trailers*, 147 F.3d 243, 248-49 (3d Cir. 1998) (involving 14-month delay). Even extreme delays may be justifiable under the right circumstances. In *Bloedorn*, for example, the court ordered a successor employer to reinstate employees under Section 10(j) more than two years after the successor assumed ownership of the company. 276 F.3d 270, 299 (7th Cir. 2001). In Region 3 alone, courts have issued 10(j) injunctions after far more time passed than has in this case. *See, e.g.*, *Ley v. Wingate of Dutchess, Inc.*, 182 F. Supp. 3d 93, 105 (S.D.N.Y. 2016) (issuing 10(j) relief although 17 months had passed since filing of charge); *Dunbar v. Colony Liquor*, 14 F. Supp. 2d 223, 227 (N.D.N.Y. 1998) (issuing 10(j) relief though 14 months passed).

The cases Respondent cites are readily distinguishable. One involves a request for relief under Section 10(l), which relates to secondary boycotts, rather than Section 10(j). *See Silverman v. Local 3, IBEW*, 634 F. Supp. 671, 672 (S.D.N.Y. 1986). Though months had passed since the filing of the charge in that case, the Region had yet to issue complaint. *See id.* In another of Respondent's cases, the alleged violation was distribution of leaflets. *See McLeod v. Art Steel Co.*, 1971 WL 783 (S.D.N.Y. 1971). Understandably, the court held such conduct was not severe enough to warrant an injunction, especially since the petitioner offered no indication Respondent would repeat this relatively minor offense. *Id.* Similarly, in another case Respondent cites, the court never reached whether a six-month delay militates against issuing 10(j) relief, finding instead that just cause did not exist because there was no evidence of an organizing campaign prior to the employee's discharge. *See Paulsen v. CSC Holdings, LLC*, 2016 WL 951535 (E.D.N.Y. 2016). While the court in *Seeler v. H.G. Page* admittedly decried a four month delay, it also noted that, during the intervening period, Respondent had offered reinstatement to strikers it had refused to take back. *See* 540 F. Supp. 77 (S.D.N.Y. 1982). Here, Respondent's employees have not benefited from a similarly reassuring gesture; Respondent's animus toward unionization and the chill resulting from Marshall and Lamb's terminations remains strong. Finally, the court in *Moore-Duncan* based its decision to decline the issuance of interim relief on other factors, not the Region's delay in seeking relief, noting merely that the Region had not explained its delay and that "a better practice" would have been to offer an explanation to the court. Petitioner readily explains that its four month delay stemmed from the desire to present the court with the administrative record of its case in chief, which constitutes the best evidence of what happened. At all times, the Region has diligently investigated and litigated this matter. Courts have routinely recognized that the Board "cannot operate

overnight," but "should have time to investigate and deliberate" before seeking interim relief. *Maram v. Universidad Interamericana*, 722 F.2d 953, 960 (1st Cir. 1983). The Region timely investigated, issued complaint, obtained an expedited hearing schedule, and developed a record before filing its petition. Thus, the Region has not unduly delayed seeking 10(j) relief.

Nor has the passage of time obviated the need for an injunction. *Gottfried*, 818 F.2d at 495 (noting that delay is a significant factor in assessing the need for 10(j) relief only when such relief cannot return parties to status quo, rendering final Board order as effective as interim relief); *accord Aguayo*, 853 F.2d at 750; *Bloedorn*, 276 F.3d at 300. Here, the passage of time has not yet "so weakened the Union that even interim relief could not salvage it." *Arlook v. S. Lichtenberg*, 952 F.2d 367, 374 (11th Cir. 1992). As Petitioner's affidavits reveal, many employees remain interested in organizing, but are cowed by Respondent's conduct toward Marshall and Lamb. Section 10(j) remedies are designed precisely for this circumstance.

VI. Conclusion

Petitioner thus asks the Court to issue 10(j) relief as the existing administrative record and supplemental affidavits demonstrate reasonable cause and that such relief is just and proper.

Respectfully submitted this 17th day of March, 2017.

/s/ Jessica L. Noto
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Cayuga Medical Center
Case 03-CA-185233

Confidential Witness Affidavit

I Cheryl P. Durkee, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 8 Tanbark Circle, Freeville, NY 13068.

My cell phone number (including area code) is 607-379-0026.

My e-mail address is cdurkee@twcny.rr.com.

I am employed by Cayuga Medical Center,

located at 101 Dates Drive, Ithaca, NY 14850.

1. I started working in the Emergency Department at CMC in April 2010. I am also a charge nurse and have been since 2011. I have only worked in the Emergency Department in CMC. I have been a nurse for 30 years.
2. I only had one conversation with Andrea Champion where I told her of my union involvement. The context is as follows. We had a patient death in the waiting room of the Emergency Department in around January 18, 2017. The patient's death was caused by not enough staffing – which is one of the main reasons we are fighting for the union. We had too many patients in the emergency room for one nurse to take care of. The nurse that was triaging did not have adequate training. A few weeks after the death, I was out at the nurses' station listening to Tyler Burke, one of our team leaders, and Megan Hawkins,

Privacy Act Statement
The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, www.nlrb.gov. Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

Initials CP

the emergency department educator, discussing the triage orientation and the triage policy. I interrupted them and said that the nurse that was triaging that night was not trained. Megan said yes, she was trained because the policy says that she only needed to be trained by a qualified triage nurse, but that didn't mean she needed to be trained in the triage area. I said that was ridiculous, you know how that policy reads. You are supposed to be oriented in the area that you are going to be working. If you are triaging that means you should be oriented out in front where you are triaging. Megan said "no, that's not true. As long as you're being trained by a triage nurse you can be trained by triaging the ambulance in the back." I said, "no, that's not what triage is. Triage is deciding who needs to come back first if there are fifteen patients in the front." Megan said "let's take this back to Andrea's office." Andrea Champion is the director of the Emergency Department. When Megan and I were talking as we walked back to Andrea's office I said to Megan "you shouldn't even have travelers out in triage because they are not trained well enough. You should have your own people who have been here for years be in triage because it is your most important job in the emergency room." Megan just kept saying "let's go back to Andrea's office." I said to Megan, "you know why this is happening. You're taking it out on us because we are trying to form a union. So I'm charge on every night for three years and now since I'm pro-union I'm suddenly not. Half of your problem is you are letting your secretary, who has no medical background, do the daily schedule of what nurse goes where and she doesn't even know who is qualified to be in those spots." At this point we arrived in Andrea's office.

3. Andrea was in her office and Megan said "Cheryl has some concerns about triage and travelers doing triage." I said, "yeah I have problems with travelers doing triage. I used to

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orient the new nurses in triage and I used to do triage all the time because I have a ton of experience in triage. Now suddenly you have travelers doing triage because I'm pro-union. Enough is enough. People are dying. You guys are just trying to take things out on us because we are pro-union now all I seem to be able to do is be a staff nurse. My skills never changed just because I became pro-union." Andrea said "I didn't even know you were pro-union, but that has nothing to do with it. You can be pro-union or against union. It doesn't matter to us." I was wearing my union button when she said she did not know I was pro-union. I said something to the effect that, "we're still desperately trying to get this union even though management thinks it's over with but it's not." I didn't say this to Andrea at the time, but what we are waiting for is Anne to get her job back, and then we will be able to ramp things up again.

4. I did not tell Andrea Champion that "in case you have not heard, I am not only a union supporter, but I am a union organizer." The only conversation I had with Andrea Champion where I told her I was pro-union was the one recounted above. I would certainly not have called myself an organizer. I don't use that term.
5. Since I started supporting the Union openly I have not been assigned to be charge nurse or to do triage as frequently as I used to before I openly supported the Union.
6. I also used to precept new nurses. However, I am no longer allowed to do this. For example, when Zach started in about early January 2017, I offered to precept him. He came back to me after talking to Andrea Champion and Megan Hawkins and told me they said I could not precept him because I had too much experience.
7. I have always been willing to table, but I will not do it by myself. Since Anne left no one is willing to table with me. There have been no instances of tabling since Anne and Loran

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were fired. The picture that has been shown to me as Exhibit C to Document 18, where I am shown to be tabling in the cafeteria, was taken toward the end of 2015. That was my first tabling ever. I was tabling with Michelle Meckley, she was the person who took the picture.

8. Since they were terminated, I've still posted some pro-union articles on my Facebook and wear a union button, but I haven't tabled and there are hardly any meetings anymore. The union movement has completely stalled. In fact, at least ten nurses have told me that they didn't even know that the union movement was still happening because of how much it has stalled.

9. We used to have union meetings once a week for a long time. We had anywhere between 6 and 20 people at the meetings before Anne and Loran's termination. After Anne and Loran got fired we have had only two meetings and there have only been as many as four of us in attendance. We advertised meetings on Facebook, but people would not necessarily click that they were "interested" or "went" on the page because they don't want to out themselves.

10. I used to hang pro-union flyers around the facility, but since Anne and Loran were fired I have not hung a single flyer ~~around the flyers~~ around the facility.

11. There is a new nurse, Zach who started in the Emergency Room. He said "If Anne gets her job back I'm on board to table and go to meetings. I'm 100% with you, but only if Anne gets her job back. I am going to wait until Anne gets her job back."

12. Kelly Breslin is an ED nurse who is pro-union. After Anne got fired she said "I can't do anything with you guys because I cannot afford to get fired. I am a one income family right now." Her husband is in medical school.

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13. Jamie Arregelin is an ED nurse who is pro-union. She told me that she is refusing to come forward anymore because she is a one income family too. Her 32 year old husband just had a stroke and she is now a one income family. She used to attend meetings but now she refuses because she's too afraid that she'll get fired if she is too visibly supportive of the union.
14. I have had similar conversations to the ones I had with Zach, Kelly, and Jamie with several other nurses who are too afraid to openly support the union because of Anne and Loran's terminations.
15. I cannot get any of my coworkers to move or do anything with the union at this point because Anne was fired.
16. Since Anne and Loran got fired I am afraid I might also get fired for being too open about the union. I feel that they are waiting for me to make any sort of mistake or slip up so that they can fire me.
17. I in no way took over the reins since Anne and Loran were fired, I am too afraid to.
18. I have nothing further to add at this time.

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I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this Confidential Witness Affidavit consisting of 6 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

Date: 3/10/17 **Signature:** Cheryl P. Durkee

Cheryl P. Durkee

Signed and sworn to before me in person on March 10, 2017.

JESSICA L. NOTO
Board Agent
National Labor Relations Board

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL J. MURPHY, Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v. **3:17-MC-0004**

CAYUGA MEDICAL CENTER OF ITHACA,

Respondent.

THOMAS J. McAVOY,
Senior United States District Judge

DECISION & ORDER

Before the Court is Petitioner's request for a temporary injunction pursuant to Section 10(j) of the National Labor Relations Act ("NLRA"), 29 U.S.C. §160(j), requiring reinstatement of two employees pending final administrative disposition of unfair labor practices charges brought against the respondent. See dkt. # 1. The parties have briefed the issue and the Court has determined to decide the matter on the administrative record without a hearing.[1]

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[1]The Petitioner also moved to have the Court decide the issue on the administrative record. See dkt. # 2. The Court asked for briefing on this issue. The Respondent argued that the Court could decide the issue on the record, but contended that the record was insufficiently developed for the Court to make a proper conclusion on the injunction. As this is an argument that goes to the merits of granting the Section 10(j) injunction, the Court will consider Respondent's arguments in that context but grant the Petitioner's motion. The Petitioner also moves to shorten time and for an expedited hearing on the Petition. See dkt. # 3. As the Court is now deciding the Petition, the Court will deny that motion as moot.

I. BACKGROUND

This case concerns ongoing disputes surrounding a union organizing campaign led by 1199 SEIU United Healthcare Workers East (the "Union") at Cayuga Medical Center in Ithaca, New York. The Union has been seeking since early 2015 to organize registered nurses at the facility. Petitioner, Regional Director for the National Labor Relations Board ("NLRB"), alleges that Respondent Cayuga Medical Center of Ithaca has engaged in a vigorous campaign, "replete with unfair labor practices," to prevent the Union from gaining a foothold at the Medical Center. The Union has filed numerous unfair labor practices charges with the NLRB, which the Petitioner investigated, found meritorious, and brought to a hearing before an Administrative Law Judge. On October 28, 2016, the ALJ issued a decision that found that the Respondent violated the NLRA in numerous ways, including a finding that Anne Marshall, one of the nurses who is the subject of the instant petition, had been improperly targeted for discipline and demotion because of her union activities. See Exh. I to Petition for Preliminary Injunction, dkt. # 1-3.

On September 29, 2016, the Union filed additional unfair labor practices charges against the Respondent, alleging that on September 23, 2016, Respondent violated Section 8(a)(3) by disciplining two nurses, Loran Lamb and Anne Marshall, in retaliation for their union activities. See Exh. A to Petition, dkt. # 1-1. The Complaint alleged that Respondent had suspended Lamb and revoked her email access and that Respondent had threatened discipline and revoked the email access of Marshall. Id. The Union Amended the charge on November 22, 2016 to allege that Marshal was suspended in retaliation for her union activities on October 4, 2016. See Exh. B to Petition, dkt. # 1-1. Another charge, filed on October 12, 2016, alleged that Respondent had been violating

Section 8(a) of the NLRA since July 2016 by interfering, restraining and coercing employees from exercising their rights under the Act. See Exh. C to Petition, dkt. # 1-1. The Union alleged that the Respondent had violated the act by "discriminatorily enforcing its bulletin board policy, . . . engaging in surveillance of union activity, . . . forcibly removing an employee from a conversation with a union organizer, and . . . requiring employees to wear anti-union buttons." Id.

On November 29, 2016, the Petitioner issued an order consolidating the above cases, setting forth a consolidated complaint, and providing notice of a hearing. See Exh. D to Petition, dkt. # 1-1. The complaint alleged that in July 2016, the Respondent "prohibited employees from posting union literature around the facility while permitting employees to post other literature." Id. The complaint also alleged that on September 21, 2016, Respondent suspended Loran Lamb and on October 5, 2016, Respondent terminated her employment. Id. The complaint further alleged that Respondent suspended Anne Marshall on October 5, 2016, and terminated her employment on October 6, 2016. Id. The complaint alleges that Respondent engaged in these employment actions "because the named employees of Respondent formed, joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities." Id. Such conduct allegedly violated Section 8(a)(1) and 8(a)(3) of the NLRA. Id. The NLRB also ordered a response and scheduled a hearing on the charges to take place before an ALJ on January 9, 2017. The parties agree that such hearings are presently ongoing.

On February 21, 2017, the Regional Director filed the instant Petition, which seeks a temporary injunction from the Court reinstating Lamb and Marshall. Petitioner contends

that Respondent has violated the NLRA by preventing the Union from distributing literature at the workplace and by firing the two nurses in retaliation for their union activity. Respondent denies these allegations and insists that the matter provides no basis for injunctive relief.

II. LEGAL STANDARD

Petitioner seeks an injunction pursuant to Section 10(j) of the NLRA, 29 U.S.C. § 160(j). That section permits the NLRB, after filing a complaint alleging unfair labor practices, "to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts, for appropriate relief or restraining order." 29 U.S.C. § 160(j). "The courts have generally issued section 10(j) injuctions only to preserve the status quo while the parties are awaiting the resolution of their basic dispute by the Board." McLeod v. General Elec. Co., 366 F.3d 847, 850 (2d Cir. 1966). A court considering a request for an injunction under Section 10(j) must apply a two-part test. Hoffman ex rel. N.L.R.B. v. Inn Credible Caterers, Ltd., 247 F.3d 360, 364 (2d Cir. 2001). "First, the court must find reasonable cause to believe that unfair labor practices have been committed." Id. at 364-65. "Second, the court must find that the requested relief is just and proper." Id. at 365. In applying the first element, "'the court need not make a final determination that the conduct in question is an unfair labor practice. It need find only reasonable cause to support such a conclusion.'" Id. at 333 (quoting Silverman v. Major League Baseball Player Relations Comm., Inc., 67 F.3d 1054, 1059 (2d Cir. 1995)). The district court is to defer to the NLRB's "judgment" and "should decline to grant relief only if convinced that the NLRB's legal or factual theories are fatally flawed." Id. (internal citations omitted). As to the

second element, "'injunctive relief under § 10(j) is just and proper when it is necessary to prevent irreparable harm or to preserve the status quo.'" Paulsen v. Remington Lodging & Hospitality, LLC, 773 F.3d 462, 469 (2d Cir. 2014) (quoting Kreisberg ex rel. N.L.R.B. v. HealthBridge, 732 F.3d 131, 144 (2d Cir. 2013)). "The principal purpose of a § 10(j) injunction is to guard against harm to the collective bargaining rights of employees." Id.

III. ANALYSIS

A. Factual Background[2]

The Petitioner alleges that the campaign to organize nurses at the Cayuga Medical Center began in early 2015, growing out of nurses' frustration with persistent staffing shortages. Anne Marshall, a registered nurse employed by Respondent, served as an early and vocal advocate for the Union. Loran Lamb, also a registered nurse, joined Marshall in this public support. Both worked in the intensive care unit ("ICU"). According to the Petition, both nurses had an "unblemished" professional record and reputation before their involvement with the Union.

The earlier decision by an ALJ found, Petitioner points out, that Respondent engaged in unfair labor practices in violation of Sections 8(a)(1) and 8(a)(3). The ALJ found that "the net result of [Marshall's] union activity and her protected and concerted efforts to challenge the hospital on staffing issues was an employer that engaged in unlawfuly motivated and discriminatory targeting of her, which led directly to the adverse

[2]These facts are taken from exhibits and factual narrative in the Petition, as well as the exhibits and affidavits provided by Respondent in opposing the request for a temporary injunction. The Court uses this evidence because of the deference to the Regional Director's findings required in a 10(j) proceeding. The Court's role here is not to resolve factual disputes, but to determine whether reasonable cause exists to support the Regional Director's position based on the evidence provided.

actions taken against her by the hospital." Exh. I to Petition, dkt. # 1-1, at 1. This decision has been appealed to the NLRB and is currently pending. Marshall and Lamb continued their organizing efforts even after the hearings concerning unfair labor practices. Marshall periodically maintained an information table in the hospital's cafeteria, canvassed employees in the parking lot, wore a union button, sent emails about the union, and put signs on her car. Lamb advocated for increased staffing, wore a union button on her work clothes, and attended a hearing on the earlier charges concerning Marshall. Respondent was aware of these activities, and particularly noticed Marshall's work; an internal email concerning responses to the organizing effort included a discussion of the Respondent's "Union or Anne Marshall Focus." The Respondent also allegedly removed literature Marshall posted from a bulletin board.

On September 11, 2016, Lamb and Marshall, working in the ICU, violated the Respondent's blood transfusion policy. That policy requires that two nurses check that the blood for designated transfusion matches the doctor's order and the patient's needs two times, first at the nurses' station and then at the patient's bedside. All parties agree that only Marshall performed the check at the patient's bedside, even though both nurses signed a form that appeared as if both had been at the patient's bedside. The patient complained to the charge nurse on duty, and an investigation ensued. Respondent claims that this conduct violated hospital policy, endangered the patient, and amounted to falsifying medical records. The Petitioner, citing to confidential statements made to the Board from other ICU nurses, contends that Lamb and Marshall engaged in a practice commonly accepted on the unit. Of six ICU nurses questioned, all six testified that they

checked blood at the nurses' station, and only one nurse entered the patient's room to administer the transfusion. Petitioner further contends these nurses told the administrator charged with investigating the September 11 incident that they frequently followed the procedure Marshall and Lamb used. This investigator, Petitioner contends, encouraged the nurses to testify that they always followed the written procedures.

Respondent suspended and then terminated both Marshall and Lamb. Respondent's investigators interviewed Lamb on September 21, 2016. Lamb admitted that she knew the transfusion policy and had violated it on September 11 by not joining Marshall in the patient's room. Respondent suspended Lamb after this meeting. Marshall was on vacation when this interview occurred, and Respondent suspended Lamb without interviewing Marshall. Petitioner contends that the decision to suspend and then terminate Marshall was made before any interview occurred, pointing to a report on the incident prepared by Respondent's Director of Patient Services and a draft letter designed to be sent to employees, physicians and volunteers about the incident. Both of those documents concluded that Marshall had engaged in misconduct even before the Respondent had spoken to her about the events in question. Indeed, the draft letter to employees, Petitioner alleges, included a statement that the nurses had been fired. Petitioner asserts that these draft documents are "persuasive evidence that the investigation had a foregone conclusion considering that the nurses interviewed" by investigators "said they routinely perform blood checks at the nurses' station; the investigation was ostensibly ongoing; and Marshall had not yet been suspended, terminated or even interviewed about the incident."

After interviewing Marshall when she returned from vacation on October 4, 2016, Respondent suspended her. Respondent terminated Lamb on October 5 and Marshall on October 6. Both resigned in lieu of their discharge. Respondent sent employees an email explaining the terminations on October 7; this email was nearly identical to the draft circulated before the Respondent interviewed Marshall. The Petitioner contends that:

> Based on the credible testimony of witnesses and documentary evidence . . . the evidence demonstrates that Marshall and Lamb failed to follow a policy that Respondent had never before enforced; Respondent knew other nurses failed to follow that policy; Respondent conducted an investigation with a predetermined outcome into Marshall and Lamb's violation of the policy; and Respondent nonetheless suspended and terminated Marshall and Lamb for failing to follow this policy.

Petitioner's Brief, dkt. # 1-5, at 14.

Petitioner points to other incidents where nurses failed to follow the transfusion policy and did not receive the same discipline as Marshall and Lamb. These incidents could be seen as more egregious than the one on September 11, 2016, since the patients in these cases suffered potentially adverse medical reactions to the incidents. In both cases, the nurses who violated the transfusion policies faced no serious discipline, but instead were forced to review the transfusion policy with Respondent's staff. Likewise, nurses who violated policies and protocols in other areas received instruction rather than discipline. Respondent had disciplined some nurses who failed to follow protocols, but under different circumstances. One nurse was terminated, for example, after failing to follow blood protocols, but that nurse had also diverted narcotics. Other nurses involved in the incident were simply "debriefed" on the matter.

Petitioner also contends that Respondent's firing of Lamb and Marshall has undermined the Union's organizing efforts. Petitioner has produced affidavits from nurses

Respondent still employs who attest to a chilling affect on organizing since the terminations. See Exhs. F-G, H, J, K, to Petition, dkt. #s 1-2, 1-4, to Petition. Jacqueline Thompson's affidavit, for instance, avers that "[t]he Union and its campaing at the Hospital were regular topic[s] of conversation amongst employees" with whom Thompson worked "before Lamb and Marshall were fired." Thompson Affidavit, Exh. F to Petition, dkt. # 1-2, at ¶3. Marshall had worn pro-Union buttons, passed out literature, and sent emails about the Union through the Respondent's email system before her termination. Id. at ¶ 4. After Marshall's firing, Thompson had "not seen any employee engage in any of these activities," and no other employee had contacted her "regarding the continuation of the organizing effort." Id. According to Thompson, "[t]he Union organizing campaign is dead in the water[.]" Id. at ¶ 6. Thompson points to two reasons for this demise: no other employee wants to lead the organizing effort and "general sense of fear" has followed "Marshall and Lamb's terminations." Id. Thompson herself is not interested in taking a lead in the organizing campaign for fear of being fired, and because "I feel as though I would be targeted by hospital management if I attempted to lead the union campaign, and I do not want that to occur." Id. Other affidavits similarly find a decline in organizing, less discussion of the Union, and a decrease in the willingness of employees to be identified with the Union since the firings. See Exh. G at ¶ 8; Exh. H at ¶ 6, Exh. J at ¶¶ 5-8; Exh. K at ¶¶ 7-9.

B. Reasonable Cause

The Regional Director argues that Respondent has violated sections 8(a)(1) and 8(a)(3) of the NLRA. The NLRA provides that "[I]t shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights

guaranteed in section 7" of the NLRA and "(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." 29 U.S.C. §§ 158(a)(1), (a)(3). Section 7 of the NLRA establishes, in relevant part, that "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other protected activities for their purpose of collective bargaining or other mutual aid or protection[.]" 29 U.S.C. § 157. "An employer violates section 8(a)(3) by firing an employee for engaging in union activity." New York University Medical Center v. N.L.R.B., 156 F.3d 405, 411 (2d Cir. 1998). Such conduct also violates section 8(a)(1). Torrington Extend-A-Care Employee Ass'n v. N.L.R.B., 17 F.3d 580, 591 (2d Cir. 1994). In such cases, "the determinative issue is the employer's motivation." Id. First, the NLRB must be persuaded "that anti-union animus contributed to the employer's decision." Id. If this prima facie burden is met, "the burden shifts to the employer to demonstrate by a preponderance of the evidence that the same employment action would have been taken in the absence of the protected conduct." Id.

The Respondent argues that the Petitioner has not demonstrated reasonable cause. The Respondent contends that the firing of Lamb and Marshall was unrelated to their union activities. Instead, the nurses were terminated because of "flagrant misconduct and disregard for patient safety." Both nurses, after all, are the subject of a State investigation for the activities that led to their termination, and Cayuga Medical Center regularly fires employees who falisfy medical records. Moreover, Respondent argues, Petitioner has not provided any documentary evidence to support its claims for that Respondent committed unfair labor practices. Respondent further argues that the

evidence it supplied will substantiate that the terminations were justified and not motivated by the nurses' union activity. Injunctive relief is inappropriate here, Respondent argues, because the administrative record has not been fully developed.

The problem with the Respondent's position is that the Court's role here is not to make credibility determinations or weigh the value of the evidence supporting CMC's decision to terminate the nurses against that supporting the Petitioner's position. Instead, the Court is to defer to the NLRB's findings unless those findings are "fatally flawed." Hoffman, 79 F.3d at 333. Petitioner "is not required to show that an unfair labor practice occurred, or that the precedents governing the case are in perfect harmony, but only that there is 'reasonable cause to believe that a Board decision finding an unfair labor practice will be enforced by the Court of Appeals.'" Kaynard v. Mego Corp., 633 F.2d 1026, 1033 (2d Cir. 1980) (quoting McLeod v. Business Machine and Office Appliance Mechanics Conference Board, 300 F.2d 237, 242 n.17 (2d Cir. 1962)). Even where disputed facts exist, "the Regional Director should be given the benefit of the doubt in a proceeding for § 10(j) relief." Id.

The Court finds that the facts presented to the Court, giving the Petitioner the benefit of the doubt, create reasonable cause to believe that the Court of Appeals will enforce a finding by the NLRB of unfair labor practices in relation to the firing of Nurses Lamb and Marshall. The Petitioner has put forth evidence, as related above, that creates reasonable cause to believe that Respondent terminated the nurses because of their union activity. The Regional Director has presented evidence that indicates that the actions for which Respondent allegedly fired Lamb and Marshall–failing to both be present in the room when a transaction occurred and failing to document the transfusion

truthfully–were actions that did not lead to the firing of other employees who engaged in the same behavior. The Regional Director has also presented evidence that makes it reasonably likely that Respondent was motivated by anti-union animus for the firing. Beyond the extreme action taken against nurses with stellar work records who were involved vociferously in the union campaign, the Petitioner has also provided evidence that an ALJ has already found that Respondent acted out of anti-union animus in previously disciplinary actions against Marshall. Courts are permitted to use such decisions in evaluating a 10(j) motion, since "the ALJ's factual and legal determinations suppy a useful benchmark against which the Director's prospects of success may be weighed." Bloedorn v. Francisco Foods, Inc., 276 F.3d 270, 288 (2d Cir. 2001). Evaluating the Regional Director's position from the deferential perspective required in this proceeding, the Court finds that the Petitioner's position is not fatally flawed.

Respondent's arguments simply quarrel with the facts, asserting that the stated reasons for the decision to fire the nurses were the real ones and pointing out that a failure to follow the stated transfusion policies could endanger a patient. Whatever the merits of those arguments, they can be raised before the ALJ and the Court of Appeals if necessary. At this point, the Court finds "reasonable cause to believe that the respondent ha[s] committed unfair labor practices under section 8(a)(1) and 8(a)(3) of the Act." Seeler v. Trading Port, Inc., 517 F.2d 33, 36 (2d Cir. 1975). Even when "there are disputed issues of fact in the case, the Regional Director should be given the benefit of the doubt[.]" Id. at 36-37. The Court therefore finds that the first part of the test has been met.

C. Just and Proper Injunctive Relief

Respondent argues that the Court is to "apply the same general equitable principles

that ordinarily apply in determining the propriety of injunctive relief, including irreparable harm, balance of equities, and public interest." Citing Ahearn v. House of Good Samaritan, 884 F.Supp. 654, 661 (N.D.N.Y. 1995). Using these standard, Respondent argues, the Court must deny relief because "there is no threat of remedial failure" and the balance of the equities weigh against granting an injunction. Of particular concern, Respondent insists, is the threat to public safety and the welfare of CMC patients that would come from reinstating two nurses found to have endangered a patient during a blood transfusion. In any case, a union organizer still is in place at CMC, and any alleged threat to the union organizing campaign is vastly overstated. Finally, the Petitioner waited several months to seek equitable relief after the nurses' termination, and this action undermines any claim that a speedy decision on reinstatement is necessary.

The Respondent misstates the law in this area. The Second Circuit Court of Appeals recently explained that, while "the 'just and proper'" element "of the 10(j) injunctive relief standard for labor disputes incorporates elements of the four-part standard for preliminary injunctions that applies in other contexts," courts evaluating a Section 10(j) request do not need to apply that standard. Kreisberg, 732 F.3d at 141. In reaching this conclusion, the court noted that, unlike a Section 10(j) proceeding, an ordinary "preliminary injunction involves no preliminary determination by a government enforcement agency, is resolved on the merits by the district court, and is issued pursuant to the court's equitable power rather than a specific statute." Id. Under Section 10(j), however, "petitions come from a unique statutory scheme that requires (1) deference to the NLRB, which resolves the underlying unfair labor practice complaint on the merits and makes an initial determination, prior to the filing of a petition, to file such a complaint, as well as (2)

speedy resolution to preserve the status quo in a labor dispute[.]" Id. The Court will thus apply the "just and proper" standard as articulated by courts in reference to Section 10(j), rather than to the general standards courts use in deciding on equitable relief. Under that standard, "injunctive relief under § 10(j) is just and proper when it is necessary to prevent irreparable harm or to preserve the status quo." Hoffman, 247 F.3d at 368. The proper "'test for whether harm is irreparable in the context of § 10(j) . . . cases is whether the employees' collective bargaining rights may be undermined by the . . . [asserted] unfair labor practices and whether any further delay may impair or undermine such bargaining in the future.'" Kreisberg, 732 F.3d at 142 (quoting Hoffman, 247 F.3d at 369). The status quo that should be preserved "is that which was in existence before the unfair labor practice occurred." Id. at 143 (internal quotations omitted).

The Second part of the test is also satisfied. Here, the alleged unfair labor practice involves firing employees for their participation in the organization drive. Firing employees for wanting to join a union surely undermines collective bargaining rights and has the effect of discouraging future organizing. Petitioner has provided evidence, cited above, to this effect. Multiple affidavits from workers at Cayuga Medical Center indicate that the firings have created a fearfulness among nurses that any connection with the Union could cause them to be fired. Attendance at meetings and participation in unionizing events has been reduced, and the affiants indicate that the reduction is directly related to fear for employment. In this context, "the rights of improperly discharged employees take priority over the rights of those hired to replace them." Paulsen, 773 F.3d at 469. Since "the main focus of a § 10(j) analysis should be on harm to organizational efforts, . . . time [is] of the essence in reinstating fired employees." Id. A delay in reinstatement "is a significant

concern because the absence of employees who support a union can quickly extinguish organizational efforts and reinforce fears within the workforce concerning the consequences of supporting union activity." Id. Thus, an injunction is just and proper under the circumstances.[3]

The Court will therefore grant the Section 10(j) injunction as requested.

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[3]Respondent contends that the delay between the firing and filing of the instant petition demonstrate that such relief is unnecessary. The cases Respondent cites in support of this proposition are inapposite and unpersuasive. In Seeler v. H.G. Page & Sons, Inc., 540 F.Supp. 77 (S.D.N.Y. 1982), for instance, the court denied a request for a 10(j) injunction because of the Regional Director's four-month delay in seeking it. The court found that injunction relief is unavailable "where the Board itself does not treat the ongoing violations with urgency." Id. at 79. The injunction sought in Seeler largely sought reinstatement of employees who had struck to protest unfair labor practices like firing a union organizer and threatening to shut the company down if the union won a collective bargaining election. Id. at 78. By the time the Board sought the injunction, however, "most, if not all, of the striking employees ha[d] been offered the opportunity to return to work." Id. The court found that these facts, in addition to the delay in filing, belied the Board's argument that an injunction was necessary to prevent "erosion" of the union's position. Id. at 79. Congress enacted Section 10(j), after all, "to prevent violators of the Act from accomplishing 'their unlawful objective' pending adjudication by an administrative law judge." Id. As explained above, the alleged unlawful firings, undertaken to slow the organizing drive, have not been rectified and have served to promote an unlawful objective of quieting organization efforts while decision by an ALJ is pending. Silverman v. Local 3, Intern. Broth. of Elec. Workers, AFL-CIO, 634 F.Supp. 671 (S.D.N.Y. 1986), involved section 10(l), not section 10(j) of the NLRA; the case involved a union engaging in a secondary boycott. Id. at 672. Moreover, at the time the Board sought an injunction, the Board had not filed a complaint against the union and had not provided the court with an administrative record. Id. Here, the case involves a different section of the statute, an administrative record has been created at least in part, and, as the Court has found, irreparable harm would come to the Union from failing to issue a temporary injunction. The delay complained of by the court in Moore-Duncan v .Traction Wholesale Center Co., Inc., 1997 WL 792909 (E.D.Pa. Dec. 19, 1997), at six months, was months longer than the delay in this case. In any case, the Court finds that an injunction here fits the statutory purpose as described in that case: "because of the protracted nature of the administrative proceedings, absent the relief provided for in 10(j), a company could accomplish its goal of preventing unionization through the use of unlawful means before a final order restraining such activity. This would, of course, render the order ineffective for all practical purposes." Id. at *1.

IV. CONCLUSION

For the reasons stated above, the Petitioner's motion for preliminary injunction, dkt. # 1, is hereby GRANTED, as follows:

1. The Respondent, its officers, representatives, agents, servants, employees, attorneys, successors and assigns, and all persons acting in concert or participation with them, pending final disposition of the matters involved here pending before the National Labor Relations Board, are hereby ORDERED to:

   a. Within five (5) days of the date of this Order, the Respondent is hereby ordered to offer reinstatement to Anne Marshall to her former position with her seniority and all other rights and privileges;

   b. Within five (5) days of the date of this order, the Respondent is hereby ordered to offer reinstatement to Loran Lamb to her former position with her seniority and all other rights and privileges;

   c. Post copies of this Order at the Respondent's Ithaca, New York facility where notices to employees are customarily posted, those postings to be maintained during the pendency of the Board's administrative proceedings free from all obstructions and defacements; all employees shall have free and unrestricted access to said notices;

   d. Grant to agents of the Board reasonable access to Respondent's Ithaca, New York facility to monitor compliance with this posting requirement;

   e. Within seven (7) days of the date of this order, hold a mandatory

meeting scheduled to ensure the widest possible attendance, during work time, and have a responsible official for Respondent, in the presence of a Board agent, or at Respondent's option, a Board agent, in the presence of the Respondent's official, read the Conclusion to this Order and notice to employees; and

f. Within twenty-one (21) days of the issuance of this Order, file with the District Court and submit a copy to the Regional Director of Region Three of the Board, a sworn affidavit from a responsible official of Respondent setting forth, with specificity, the manner in which Respondent has complied with the terms of this decree, including how it has posted the documents required by the Court's decree.

The Petitioner's motion to determine the Petition on the basis of the administrative record, dkt. # 2, is hereby GRANTED. The Petitioner's motion to shorten time and for an expedited hearing, dkt. # 3, is hereby DENIED as moot.

IT IS SO ORDERED

DATED:March 22, 2017

Thomas J. McAvoy
Senior, U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JUDGMENT IN A CIVIL CASE

PAUL J. MURPHY, etc.
Petitioner
vs.

CASE NUMBER: 3:17-MC-04

CAYUGA MEDICAL CENTER AT ITHACA, INC.
Respondent

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Petitioner's [1] motion for preliminary injunction is granted pursuant to [28] Decision and Order of Honorable Judge Thomas J. McAvoy, filed on the 22nd day of March, 2017.

DATED: April 13, 2017

Clerk of Court

s/ C. M. Ligas
Deputy Clerk

Clerk of Court

Federal Rules of Appellate Procedure
Rule 4. Appeal as of Right

(a) Appeal in a Civil Case.

1. (1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;
(ii) a United States agency;
(iii) a United States officer or employee sued in an official capacity; or
(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58 (a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79 (a); or

(ii) if Federal Rule of Civil Procedure 58 (a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

• the judgment or order is set forth on a separate document, or

• 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL J. MURPHY, Regional Director of the Third REgion of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CAYUGA MEDICAL CENTER,

Respondent.

NOTICE OF APPEAL

Case No. 03:17-MC-0004

Respondent Cayuga Medical Center ("CMC" or "Respondent") gives notice that, pursuant to 28 U.S.C. § 1292(a)(1), it hereby appeals to the United States Court of Appeals for the Second Circuit from this Court's Memorandum Decision and Order dated March 22, 2017 (entered March 23, 2017) granting an injunction in favor of Region Three of the National Labor Relations Board pursuant to Section 10(j) of the National Labor Relations Act, 29 U.S.C. § 160 (j).

Dated: March 23, 2017

BOND, SCHOENECK & KING, PLLC

By: s/ Raymond Pascucci

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 23, 2017, a copy of the foregoing **NOTICE OF APPEAL** was served via the CM/ECF upon the following:

Jessica Noto (Bar Roll No. 519389)
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